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AZ CORP COMMISSION
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Jeana R. Webster, Esq.
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July 30, 2003

Via Hand-Delivery

Docket Control Center
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007-2996

Re: Arizona Securities Division Docket No: S-03539A-03-0000

Dear Sir or Madam:

Enclosed herewith please find one copy of Respondents Yucatan Resorts, Inc., Yucatan Resorts, S.A., Resort Holdings International, Inc., and Resort Holdings, International, S.A.'s Reply in Support of their Motion to Dismiss the Temporary Order to Cease and Desist and Brief in Support Thereof.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

Jeana R. Webster

Jeana R. Webster

Enclosures
cc: Martin R. Galbut, Esq.
Joel Held, Esq.
Paul Roshka, Esq.

Arizona Corporation Commission
DOCKETED
JUL 30 2003
DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON

Arizona Corporation Commission
DOCKETED
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In the matter of:

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

RESORT HOLDINGS INTERNATIONAL, INC. d/b/a
RESORT HOLDINGS INTERNATIONAL, S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

WORLD PHANTASY TOURS, INC.
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY
Calle Eusebio A. Morales
Edificio Atlantida, P Baja
APDO, 8301 Zona 7 Panama

MICHAEL E. KELLY and LORI KELLY,
husband and wife,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;

Respondents.

DOCKET NO. S-03539A-03-0000

RESPONDENTS RESORT HOLDINGS INTERNATIONAL, INC., RESORT HOLDINGS INTERNATIONAL, S.A., YUCATAN RESORTS, INC., AND YUCATAN RESORTS, S.A.S' REPLY IN SUPPORT OF MOTION TO DISMISS TEMPORARY ORDER TO CEASE AND DESIST

Respondents YUCATAN RESORTS, INC. ("Yucatan, Inc."), YUCATAN RESORTS, S.A. ("Yucatan, S.A."), RESORT HOLDINGS INTERNATIONAL, INC. ("RHI, Inc."), RESORT HOLDINGS INTERNATIONAL, S.A. ("RHI, S.A.") (collectively "Respondents"), file this, their Reply in Support of Motion to Dismiss Temporary Order to Cease and Desist ("C&D Order"), and respectfully show the following:

I.
GENERAL

The Division in its Response, plays fast and loose with the facts. The Division purposely throws all Respondents into the same category as if they were a single entity or person and seeks by its argument to make a timeshare, which is clearly the subject of a separate specific Arizona statute, part of the securities laws. Simply stated, the Division's arguments are meritless.

As clearly demonstrated by several admissions contained in the Division's Complaint, as well as facts stated in various pleadings filed by the Respondents, Yucatan, S.A. and RHI, S.A. offered and sold timeshares in the form of a Universal Lease. Pursuant to the terms of the Universal Lease, the Leaseholder receives nothing more than the right to use or rent a vacation unit.

Respondent Word Phantasy Tours, a Panamanian corporation having no joint ownership, control or other ownership relationship with any other Respondent in this case, and a company which does not offer or sell the Universal Lease, provides potential leaseholders with the opportunity to execute a servicing agreement appointing World Phantasy Tours as the rental agent for the vacation unit. World Phantasy Tours on the one hand and Yucatan, S.A. and RHI, S.A. on the other hand, are separate entities and the servicing agreement offered by World Phantasy Tours, is not a part of, nor a condition to, the Universal Lease (or visa versa).

The Division blurs these lines of distinction and claims that the Universal Lease promises an annual rate of return of 9% or 11% for a period of twenty-five years. Nothing could be further from the truth. The Universal Lease documents submitted by the Division prove beyond doubt that neither Yucatan, S.A., RHI, S.A., nor the Universal Lease offer anything of the kind. It is World Phantasy Tours that offers the opportunity for a fixed, non-variable rental fee to potential leaseholders, not either Yucatan, S.A. or RHI, S.A. Thus, it is not Yucatan, S.A. nor RHI, S.A. who offer any profit, return, monetary inducement or anything else of cash value to a leaseholder. They simply offer a vacation unit.

Moreover, cutting through all of the attempts made by the Division to co-mingle all of the Respondents and make them appear as one entity, there is no question that neither Yucatan Resorts, Inc., Resort Holding International, Inc., nor any Respondent other than Yucatan Resorts, S.A. or RHI, S.A. offered or sold the Universal Lease in Arizona.

In essence the Division claims that Yucatan, S.A. and RHI, S.A. promised a 9% and 11% return and offered such return as an option in the Universal Lease. A reading of the Universal Lease evidences that the allegation is completely false.

II.
UNIVERSAL LEASE IS NOT A SECURITY

In order to constitute an investment contract, there can be no question that there must be a promise of profit to be derived substantially from the efforts of the promoter. *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946). As demonstrated by the Universal Lease itself, there is no promise of profit by Yucatan, S.A. or RHI, S.A. The only promise of money is made by World Phantasy Tours in the event that a leaseholder chooses to use World Phantasy Tours as a leasing agent. However, that is a real estate transaction between the leaseholder and World Phantasy Tours and

the choice belongs to the Leaseholder. Moreover, the use of World Phantasy Tours is totally independent from the purchase by the Leaseholder of the Universal Lease.

The Division claims that payments for the Universal Lease are pooled into a same bank account in Indiana. However, the Division misses the point on the concept of pooling. The pooling concept relates to the pooling of funds for the purpose of producing a profit. Simply depositing money into the same bank account does not pool funds for that purpose. Moreover, all payments for the Universal Leases are received by the seller of the Universal Lease: either Yucatan, S.A. or RHI, S.A. As previously mentioned, neither of those entities promise any return to a leaseholder. There is no evidence, nor any allegations, that payments made by Leaseholders for their vacation units end up in the hands of World Phantasy Tours. It is clear, therefore, that the second element of the *Howey* test (a common enterprise) and the third element of the *Howey* test (expectation of profit) simply do not exist in this case.

III.
THE ARIZONA DEPARTMENT OF REAL ESTATE (AND NOT THE SECURITIES DIVISION) HAS JURISDICTION OVER THIS MATTER

Timeshare legislation, in Arizona, was introduced in the form of House Bill 2346, in 1982.[1] This legislation was designed to regulate the sale of timeshares in Arizona, and was drafted by the Real Estate Department in conjunction with industry representatives and the Security Division of the Arizona Corporation Commission. *See* Senate Commerce & Labor Committee Meeting Minutes, dated March 25, 1982, and attached hereto as Exhibit "2." By the end of 1981, there were only 12 states that had legislation of they type. Thus, Arizona was among the pioneers in developing timeshare legislation. *Id.*

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[1] *See* House Bill 2346 from the 35th Legislature, Second Regular Session – 1982, at Chapter 116, p. 274, and attached hereto as Exhibit "1."

At the very core of House Bill 2346 was the notion and understanding that the Real Estate Department would exclusively oversee, implement and regulate this legislation.[2] The bill stated:

> "An Act relating to professions and occupations; providing for regulation of real estate timeshares by the real estate department; prescribing definitions; providing for issuance of time-share public reports; prescribing recission rights; prescribing certain required documents and information; prescribing powers and duties of real estate commissioner; prescribing conditions for voidable sale or lease; providing for investigations, hearings, orders and fees; providing for filing of advertising material; providing for exemptions; providing for civil liabilities and civil penalties; prescribing violation and classification of a certain criminal offense; prescribing nonapplicability of certain securities laws; prescribing applicability, and amending title 32, chapter 20, Arizona Revised Statutes, by adding article 9." *See* Exhibit 1.

Thus, it is clear that the Real Estate Department was given the authority to regulate timeshares in the State of Arizona, including, *inter alia*, the power to: (1) issue time-share public reports; (2) void sales, provide for investigations, and dispose of litigation; (3) award damages for civil damages and penalties; and (4) exempt the application of securities laws. *Id.*

Importantly, the Securities Division worked closely with the Real Estate Department in drafting the legislation and they endorsed the bill. *See* Exhibit 2. This admission by the Securities Division, coupled with the express language of the bill, conclusively demonstrated that: (1) the administration and regulation of timeshares falls under the control of the Real Estate Department; and (2) the Securities Division ceded any power or right to regulate timeshares to the Real Estate Department. *Id.*

If the admission by the Securities Division that the Real Estate Department was to handle timeshare issues was not clear enough, A.R.S. § 32-2197.17 (the original securities exemption statute and predecessor to A.R.S. § 32-2197.22) provided that securities statutes § 44-1841 and §

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[2] Representative Kenny stated to the Committee on Tourism, Professions and Occupations that: "this bill [House Bill 2346] provides for the regulation of real estate timeshares by the Real Estate Department." *See* Committee Meeting Minutes, dated March 1, 1982, and attached hereto as Exhibit "3."

44-1842 shall not apply to a timeshare project which has been issued a timeshare public report pursuant to the provisions of article 9. *See* Exhibit "1," p. 283, regarding A.R.S. § 32-2197.17. Thus, since 1982, the Real Estate Department, not the Securities Division, has been vested with the power to determine what is and what is not a timeshare, whether the timeshare is properly registered and, whether, the timeshare project is exempt from the application of securities statutes.

Even in 1982, Arizona recognized the huge financial benefit that timeshares brought to the state, and the need to regulate the developing industry. The Real Estate Department acknowledged to Representative Don Kenny that the bill provided necessary regulation of real estate timeshares by the Real Estate Department as "this method of occupancy of real property was becoming increasingly popular." *See* Arizona House of Representatives Committee Minutes, dated March 8, 1982, and attached hereto as Exhibit "4." Businesses and businesspeople took notice too, as Mr. Clague Van Slyke, counsel for Fairfield Communities (a major timeshare developer in the United States), testified in support of the bill and its regulation by the Real Estate Department. *Id.*

The Real Estate Department embraced its role, and monitored and enforced the state law regarding timeshares. However, as the timeshare industry evolved, the 1982 legistation no longer accurately reflected the operation, practices or products of the current timeshare industry. *See* Arizona Senate Fact Sheet for House Bill 2395, attached hereto as Exhibit "5." For this reason the American Resort Development Association (hereinafter "ARDA"), the national trade association of the timeshare industry, and the Arizona Department of Real Estate worked hand-in-hand to update and revise timeshare legislation and regulation. *Id.* The result was House Bill 2395 and revisions to title 32, chapter 20, article 9 of the Arizona Revised Statutes. *Id.*

The new legislation, which was modeled on Illinois' real estate timeshare laws and Arizona's real estate subdivision laws, "incorporates modern variations of the timeshare product;

streamlines existing timeshare requirements; increases and modernizes consumer protections . . ." *Id.* Indeed, Karen Peters, an attorney for the Arizona ARDA, spoke to the House Committee on Commerce and Economic Development, and indicated that timeshares have matured significantly since the 1982 statutes were put in place, so it was necessary to do an overhaul and add 25 new definitions that relate to the details of how a timeshare plan works. *See* Committee Minutes, dated January 29, 2001, attached hereto as Exhibit "6".

Once again, the oversight, implementation and administration of the timeshare legislation was to be handled by the Real Estate Department. Roy Tanney, Director of Subdivisions for the Arizona Department of Real Estate, added that nothing has been left out of House Bill 2395, and that the new legislation has as its core the 1982 legislation, but with additions and modifications to the existing language. *Id.*

We are left with the unshakable certainty that the 2001 amendments and revisions to the timeshare legislation support that the Real Estate Department still determines what is and what is not a timeshare. Indeed, the Real Estate Department retains the authority to regulate timeshares in the State of Arizona, including, *inter alia*, the power to: (1) issue time-share public reports; (2) void sales; provide for investigations and litigation hearings; and, (3) award damages for civil damages and penalties; and (4) exempt the application of securities statutes A.R.S. § 44-1841 and A.R.S. § 44-1842.[3] This extensive timeshare regulatory scheme provides irrefutable support for the fact that the present action belongs in front of the Real Estate Department, and not the Securities Division.

It is undisputed that the Universal Lease at issue is a timeshare plan in accordance with A.R.S. §32-2197(28) because it is a lease "in which a purchaser, in exchange for consideration, receives ownerships rights in or the right to use accommodations for a period of time less than a

[3] See A.R.S. § 32-2197.22 (formerly A.R.S. § 32-2197.17).

full year during any given year. . . ." Further, it cannot be disputed that the Universal Lease is directly covered by the real estate timeshares article in that the Universal Leases relate to resort properties located outside of the State of Arizona, but have previously been offered and sold to Arizona residents. *See* A.R.S. §32-2197.24(a)(3). It is equally clear that Arizona's securities registration statutes are inapplicable to the sale of timeshares. A.R.S. §32-2197.22(A).

The Securities Division of the Arizona Corporation Commission ("Securities Division") does not, because it cannot, dispute any of the foregoing. Rather, in their Response to Respondents' Motion to Dismiss, the Securities Division takes the position that because, in its view, some or all of the Respondents did not fully comply with the provisions in the real estate timeshares article, then the Arizona securities laws necessarily apply. The Securities Division's leap of logic lacks any support in either the case law or in the clear legislative intent.

As it did when it enacted the Arizona securities laws, the Arizona legislature created a regulatory scheme pursuant to which the Arizona Department of Real Estate regulates real estate transactions occurring within the State – including the sale of timeshare plans. Thus, as it did in connection with the Arizona securities statutes, the Arizona legislature empowered the Department of Real Estate's Commissioner with the authority to investigate persons or entities engaged in the business or acting in the capacity of a broker, salesperson or developer. *See, e.g.,* A.R.S. §32-2108(A); §32-2197.14. Further, as in the Securities Act, the Commissioner of the Arizona Department of Real Estate may enter Cease and Desist Orders if he or she believes that any person is engaging or preparing to engage in any violation of the real estate statutes. *See* A.R.S. §32-2154(A). Moreover, the Commissioner for the Department of Real Estate may also file a Complaint in the Arizona Superior Court requesting a Temporary Restraining Order, a Preliminary Injunction and/or a Permanent Injunction, in addition to any other remedies available to the Real Estate Department. *See* A.R.S. §32-2160(A)(B). In addition, the Commissioner has the authority

to apply to the Superior Court for the appointment of a receiver. *See* A.R.S. §32-2197.15. Finally, the Commissioner may order civil penalties for violations of the real estate statutes. *See* A.R.S. §32-2160.01(A)(B).

Further, as in the Securities Act, the real estate timeshares article (i) prohibits the employment of "any device, scheme or artifice to defraud," (ii) prohibits obtaining money or property by means of a material misrepresentation, and (iii) prohibits engaging in "any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser." A.R.S. §32-2197.19(C). Additionally, and similar to the securities registration provisions, a person who sells or offers for sale a timeshare plan without first "registering," i.e., obtaining a public report or authorization to conduct pre-sales from the Commissioner, renders the sale or lease rescindable by the purchaser or lessee. *See* A.R.S. §32-2197.09.

The above clearly demonstrates that the Arizona legislature created a virtually parallel regulatory scheme governing real estate transactions to be overseen by the Department of Real Estate. That regulatory scheme was clearly designed to protect Arizona residents from fraudulent and improper sales practices involving the offers and sales of real estate – which specifically includes the offers and sales of timeshare plans. That regulatory scheme is clear evidence of the legislature's intent to charge the Arizona Department of Real Estate with the task of overseeing all timeshare plans – those "registered" and those "not registered." Thus, the Securities Division's conclusory statement that the Universal Lease timeshare plan is necessarily governed by the Securities Division because of asserted non-compliance by any or all of the Respondents in this case with the "registration" requirements under the timeshare article is unfounded. The mere fact that a person or entity fails to file a public report does not, thereby, divest the Department of Real Estate of the timeshare oversight functions and thereby bestow such functions upon the Securities Division. The Securities Division's argument evidences a clear over-reaching by the Securities

Division outside of their jurisdiction and into the jurisdiction of the Arizona Department of Real Estate. Such tactics are contrary to the statutes and applicable case law.

IV.
CONCLUSION

The Arizona legislature has created a comprehensive regulatory scheme that *specifically* provides the Department of Real Estate with the jurisdiction to regulate timeshare plans. By contrast, the Arizona legislature has created a comprehensive regulatory scheme that provides for the regulation of certain specified securities – none of which include a timeshare plan. *See, e.g.,* A.R.S. §44-1801(26). The Securities Division attempts to invoke the Securities Act based upon the general term of an "investment contract" and, thereby, ignore the very specific application of the real estate statutes to timeshares.

However, it is well-settled under Arizona law that when a specific statute is on point, that statute must prevail over more general statutes. *Baker v. Gardner*, 160 Ariz. 98, 100-101, 770 P.2d 766, 768-769 (1988); *Phoenix v. Superior Court*, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1994); *Crystal Point Joint Venture v. Arizona Department of Revenue*, 188 Ariz. 96, 101, 932 P.2d 1367, 1372 (Ct. App. 1997). Therefore, because the specific timeshare provisions provided in the real estate statutes govern over the very general provisions of the Arizona securities statutes – which do not include timeshares – it is clear that the Real Estate Department, and not the Securities Division, has jurisdiction over the Universal Leases. Accordingly, Respondents' Motion to Dismiss on this basis should be granted.

RESPECTFULLY SUBMITTED this 30th day of July, 2003.

GALBUT & HUNTER
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ORIGINAL and thirteen copies of the foregoing hand-delivered this 30th day of July, 2003 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 30th day of July, 2003 to:

Marc Stern, Esq.
Administrative Law Judge
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Arizona Corporation Commission
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Jaime Palfai, Esq.
W. Mark Sendrow, Esq.
Securities Division
Arizona Corporation Commission
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COPY of the foregoing sent *via* U.S. Mail
this 30th day of July, 2003 to:

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400 East Van Buren Street, Suite 800
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Attorneys for Respondents
Michael and Lori Kelly

By: _____
Jeffrey D. Gardner, Esq.

Exhibit "1"

2. Any remaining amount shall be reimbursed from the general athletic revenues of Arizona state university. The amount shall be repaid without interest at a rate to be determined by the board but not less than fifty thousand dollars per year beginning in fiscal year 1984–1985.

C. Notwithstanding § 35–190, Arizona Revised Statutes, the appropriation made by this section shall not lapse unless the appropriation stands available for one year without expenditure or encumbrance.

Sec. 2. Emergency

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor, April 14, 1982.

Filed in the Office of the Secretary of State, April 14, 1982.

REAL ESTATE TIME SHARES—REGULATIONS

CHAPTER 116

HOUSE BILL 2346

n Act relating to professions and occupations; providing for regulation of real estate time shares by the real estate department; prescribing definitions; providing for issuance of time-share public reports; prescribing rescission rights; prescribing certain required documents and information; prescribing powers and duties of real estate commissioner; prescribing conditions for voidable sale or lease; providing for certain investigations, hearings, orders and fees; providing for filing of advertising material; providing for exemptions; providing for civil liabilities and civil penalties; prescribing violation and classification of a certain criminal offense; prescribing nonapplicability of certain securities laws; prescribing applicability, and amending title 32, chapter 20, Arizona Revised Statutes, by adding article 9.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 32, chapter 20, Arizona Revised Statutes, is amended by adding article 9, to read:

ARTICLE 9. REAL ESTATE TIME SHARES

§ 32–2197. Definitions

In this article, unless the context otherwise requires:

1. "Subdivision" means a time-share project consisting of twelve or more time-share estates or time-share uses having terms of five years or more, or having terms of less than five years which also include options to renew, except that time-share uses, whether or not assignable or irrevocable, in real property other than structural dwelling places do not constitute a subdivision.

2. "Time-share estate" means a right of occupancy in a time-share project which is coupled with an estate in the real property.

3. "Time-share interval" means a time-share estate, a time-share use or a time-share period.

4. "Time-share project" means a project in which a purchaser receives the right in perpetuity, for life or for a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided.

5. "Time-share use" means a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property.

§ 32–2197.01. Time-share public report

A time-share public report must be obtained before offering for sale or lease in this state twelve or more time-share estates or time-share uses in any particular time-share project. An application for a final public report for a time-share project must contain the following documents and information:

1. Name and address of the owner or developer.

2. A comprehensive statement of the time-share program.

3. Legal description and location of the land.

4. To the extent required by applicable local or state laws, a recorded map of the project showing book, page and date of recording, and if required by applicable local or state laws, approval by the county or city in which the project is located. A map, survey or location plan is required for incomplete projects. A project involving completed buildings where all purchasers are given an on-site tour prior to a financial commitment may not require a plat map. The need for a map, survey, location plan or building plan on such completed projects will be determined at the time of application.

5. A description of the total facility in terms of the number of buildings, number of stories, common areas of the condominium or public use areas in a hotel, motel or other facility.

6. A true statement of assurances for the installation of off-site improvements.

7. Proof of adequate financial arrangements for any improvements to be installed by the developer and the estimated schedule for completion of such improvements.

8. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the project and the estimated schedule for their installation.

9. A statement of the provisions that have been made for permanent access, and provisions, if any, for health department approved sewage and solid waste collection and public utilities, including water.

10. A complete disclosure as to the operating costs of the time-share program, including all of the variable costs of operation, management and reserves and method of assessment, including evidence of financial arrangements which provide for the developer's guarantee of payment of assessment on unsold interests, or if the developer is not paying such costs, the effect such nonpayment will have on operating costs.

11. A statement indicating how time-share dwelling units will be assessed for purposes of property taxation.

12. A current preliminary title report for all dwelling units comprising the time-share project for which the application is being made.

13. The recorded declaration of dedication of the project or other project governing instruments or contracts incorporating all covenants of the grantor or lessor, creating the time-share interests, and the provisions of the plan to include organization of an association of time-share interest owners.

14. A true statement as to the methods to be used, such as release clauses or other safeguards satisfactory to the commissioner, to provide that the purchaser of a time-share interval will not lose or have his interest imperiled by the foreclosure of underlying liens, encumbrances or other obligations and that the developer can convey, or cause to be conveyed, the interest in the offering.

15. The terms and conditions as to how a purchaser's interest is to be conveyed including examples of all contracts, deeds, fact sheets and other instruments to be used in marketing, financing and conveying of time-share interests.

16. A true statement as to title to personal property within the units or project incident to a purchaser's use and how purchasers will receive assured use of personal property during the term offered.

17. A true statement of provisions made for financing any community, recreational or other facilities to be included in the offering and evidence of assurances for delivery of such facilities and provisions, if any, for the continued maintenance of such facilities.

18. A statement of the provisions made for the management of the project, including a copy of the management agreement, relationship with the developer and whether the management agent will be bonded or insured.

19. Copies of all contracts and promotional material pertaining to a program included in the offering involving the exchange of occupancy rights by owners in the project with owners of interests in other time-share projects.

20. If the project is located within the United States, but outside this state, each filing must include evidence that the project is qualified for sale in the home state according to the standards or requirements for the sale of time-share interests existing in the home state at the time of the filing.

21. If the project is located outside of the United States, each filing of a foreign project must include evidence establishing that all requirements of the home country have been met for the sale of time-share interests or the local equivalent of time-share interests in the home country at the time of the filing.

22. Such other information and such other documents and certificates as the commissioner may reasonably require.

§ 32–2197.02. Rescission of contract or agreement

Any contract or agreement to purchase or lease a time-share interval may be rescinded by the purchaser without cause of any kind by sending or delivering written notice of rescission by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser executed the contract or agreement.

§ 32–2197.03. Notification of material change

The developer of a time-share project which is the subject of an outstanding public report shall immediately report to the department relevant details concerning any material change in the project itself or in the program for marketing the time-share interests. A material change in the project or in the offering includes:

1. The sale, conveyance or the granting of an option to another to acquire twelve or more time-share estates or time-share uses in the project.

2. Deletion of a dwelling unit from the project or addition of a dwelling unit not authorized under an existing subdivision public report for the project.

3. Change in the name or form of organization of the developer such as incorporation, dissolution of a corporation, or a change in the corporate or fictitious business name.

4. Change in the instruments used in the marketing or the conveying of time-share interests previously approved by the department with regard to blanket encumbrances or the creation by the developer of an encumbrance affecting more

than one time-share interest in the project if one or more of such interests is subject to a public report issued by the commissioner.

5. An amendment to any provision of the recorded time-share declaration.

6. A change in any aspect of the offering for the project which will cause information in the current public report for the project to be incorrect or misleading.

§ 32–2197.04. Declaration of dedication

The declaration or other documents described in § 32–2197.01, paragraph 13 shall include the following general provisions as applicable to the particular time-share project:

1. Provisions for organization of an association of time-share interest owners.

2. A description of the real and personal property for the common ownership or use of the time-share interest owners.

3. A description of the services to be made available to time-share interest owners under the time-share program.

4. Provisions for transfer to the association of control over the property and services comprising the project.

5. Procedures for calculating and collecting regular and special assessments from time-share owners to defray expenses of the project and for related purposes.

6. Preparation and dissemination to time-sharing owners of budgets, financial statements and other information related to the project.

7. Procedures for terminating the membership and selling the interest of a time-share owner for failure to pay regular or special assessments.

8. Policies and procedures for the disciplining of members for failure to comply with provisions of the governing instruments for the project, including the late payment of assessments.

9. Procedures for employing and for terminating the employment of a managing agent for the project.

10. Adoption of standards and rules of conduct for the use of dwelling units by time-share interest owners.

11. Establishment of the rights of owners to the use of a dwelling unit according to schedule or under a first reserved, first served priority system.

12. If applicable, compensating use periods or monetary compensation for an owner in a time-share estate project if a dwelling unit cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing agent.

13. Provisions for comprehensive general liability insurance for death, bodily injury and property damage resulting from the use of a dwelling unit within the project by time-share owners, their guests and other users.

14. Restrictions upon partition of a time-share estate project.

15. Policies and procedures for the use of dwelling units for transient accommodations or other income producing purposes during a period of nonuse by time-share owners.

16. Policies and procedures for the inspection of the books and records of the project by time-share owners.

17. Procedures for the amendment of the declaration and other governing instruments for the project.

18. If applicable, annexation of additional dwelling units to the time-share project.

19. Policies and procedures in the event of condemnation, destruction or extensive damage to dwelling units including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.

20. Policies and procedures on regular termination of the project including details on what happens to a purchaser's interest on termination.

21. Policies and procedures for collective decision making and the undertaking of action by or in the name of the association, including, if applicable, representation of time-share dwelling units in an association for the common interest subdivision in which the dwelling units are located.

22. If applicable, allocation of the costs of maintenance and operation between those dwelling units in a hotel, motel or similar commercial lodging establishment dedicated to a time-share project and dwelling units in the same establishment being used for transient accommodations.

23. Policies and procedures for entry into dwelling units of the project under authority granted by the association for the purpose of cleaning, maid service, maintenance and repair, including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

§ 32–2197.05. Examination of project by commissioner; fee

The commissioner shall examine any time-share project offered for sale or lease and shall make public his findings. The total cost of travel and subsistence expenses incurred by the department in the examination, in addition to the initial filing fee provided for in this section, shall be borne by the owner of the project on the basis of actual cost to the department. An initial filing fee of twenty dollars per interval with a maximum fee not to exceed one thousand dollars shall accompany the written notification required in § 32–2197.01.

§ 32–2197.06. Issuance of public report by commissioner on time-share project; denial of issuance

A. Upon examination of a time-share project, the commissioner shall, unless there are grounds for denial, issue to the developer a public report authorizing the sale or lease in this state of the time-share intervals within this project. The report shall contain the data obtained in accordance with § 32–2197.01 and any other information which the commissioner determines is necessary to implement the purpose of this article. The commissioner shall require the developer to reproduce the report and furnish each prospective customer with a copy, taking a receipt for each copy. In the event of denial, grounds shall be set forth in writing at the time of denial.

B. The commissioner may deny issuance of a public report on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the regulations of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the project, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The owner, agent, developer, officer or partner, developer trust or beneficiary, or if a corporation, any stockholder owning ten per cent or more, or having a beneficial interest in ten per cent or more, of the stock of such corporation:

(a) Has been convicted within ten years preceding the date of filing the application for a public report, or at any time thereafter, of a felony or misdemeanor involving a transaction in real estate, or of which fraud is an essential element, or arising out of the conduct of any business in real estate, or of securities or mail fraud, or securities registration violations.

(b) Is permanently or temporarily enjoined by order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in

connection with the sale or purchase of real estate, sale or purchase of securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him or it by a real estate regulatory agency, or securities regulatory agency.

(d) Is lacking in integrity or is not of good business reputation.

(e) Has been guilty of any fraudulent act or practice in connection with the purchase or sale of real estate, or sale of securities.

(f) Has refused to permit an examination into his or its affairs.

5. If within this state, the time-share project is incompatible with the existing neighborhood and would induce into a neighborhood a character of property or use which would clearly be detrimental to property values in that neighborhood.

C. If the project is within a groundwater active management area, as defined in § 45–402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources, or unless the project is located within an area designated as having an assured water supply by the director of water resources pursuant to 45–576, subsection D or E.

§ 32–2197.07. Voidable sale or lease

A person shall not sell or lease or offer for sale or lease in this state twelve or more time-share intervals without first obtaining a public report from the commissioner. Any sale or lease of twelve or more time-share intervals prior to issuance of the public report is voidable by the purchaser. An action by the purchaser to void such transaction must be brought within five years of the date of the execution of the purchase agreement by the purchaser. In any such action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

§ 32–2197.08. Hearing on denial of public report

Any applicant objecting to the denial of a public report or to denial by the commissioner of exemption from special regulation pursuant to § 32–2197.13 may, within thirty days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within twenty days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any such postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

§ 32–2197.09. Investigations; orders; hearings

A. The commissioner, on his own motion, or if he has received a complaint and has satisfactory evidence that the owner, agent or developer is violating any provision of this article or rules and regulations of the commissioner or has engaged in any unlawful practice as defined in § 44–1522 concerning the sale of time-share intervals or deviated from the provisions of the public report, may investigate the project and examine the books and records of the owner, agent or developer. For the purpose of examination, the owner, agent or developer shall keep and maintain records of all sales transactions and funds received by him pursuant to such sales transactions and make them accessible to the commissioner upon reasonable notice and demand.

B. The commissioner may conduct an investigation, issue a summary order as provided in § 32–2157 or hold a public hearing, on his own motion, or if he has received a complaint and he has satisfactory evidence that:

1. A person has violated any of the provisions of this article or the rules and regulations of the commissioner.

2. A person has engaged in any unlawful practice as defined in § 44–1522 concerning the sale of time-share intervals.

3. A person has deviated from the provisions of the public report.

4. The owner, agent, developer, officer or partner, developer trust beneficiary or, if a corporation, any stockholder owning ten per cent or more of the stock in such corporation has participated in, operated or held an interest in any land development company which is bankrupt or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report.

C. After such hearing, the commissioner may issue such order or orders as he deems necessary to protect the public interest and ensure compliance with the law, or rules and regulations or public report, or may bring action in any court of competent jurisdiction against the person to enjoin the person from continuing such violation or engaging in such violation or doing any act or acts in furtherance of such violation. The court may make such orders or judgments, including the appointment of a receiver, as are necessary to prevent the use or employment by a person of any unlawful practices or which are necessary to restore to any person in interest any monies or property, real or personal, which have been acquired by means of any practice declared to be unlawful in this article.

D. For any time-share investigation made under this section of an out-of-state time-share project, or any in-state time-share project to which the commissioner issues any order necessary to protect the public interest and ensure compliance with law, rules and regulations or the public report, the developer shall reimburse the department for travel and subsistence expenses incurred by the department.

§ 32-2197.10. Order; appointment of receiver; writ of ne exeat

A. If it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article, and that such person is concealing assets or self, or has made arrangements to conceal assets or is about to leave this state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of such person or for a writ of ne exeat, or both.

B. The court, upon receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and such other evidence that the commissioner presents to the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require such notice be given as the court deems satisfactory.

C. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served upon the person engaged in or engaging in a practice declared to be unlawful under this article by delivering such order to the last address of the person which is on file with the real estate department. The order shall inform the person that he has the right to request a hearing within ten days of the date of the order, and if requested, the hearing shall be held within thirty days from the date of the order.

§ 32-2197.11. Advertising material; contents; order prohibiting use

A. The developer shall file with the commissioner a copy of any original promotional and advertising material used in connection with sales of the time-share intervals and copies of any material changes therein. The developer shall file with the commissioner, within twenty-one days after use, any subsequent advertising of any kind used directly or indirectly in connection with the purchase, sale or lease of time-share intervals subject to the provisions of this article. It is not necessary to make repetitive filings of material which is the same as or varies only in minor details from material which has previously been filed with the commissioner for the time-share int

B. Any advertising, communication or sales literature of any kind, including oral statements by salespeople or any other person, shall not contain:

1. Any untrue statement of material fact or any omission of material fact which would make such statements misleading in light of the circumstances under which such statements were made.

2. Any statement or representation that the time-share intervals are offered without risk or that loss is impossible.

3. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

C. All advertising and sales literature shall be consistent with the information contained in the notice of intention pursuant to § 32-2197.01 and the public report pursuant to § 32-2197.06.

D. If it appears to the commissioner that any person is engaging or has engaged in advertising or promotional practices in violation of this article, the commissioner may hold a hearing as a contested case under the provisions of title 41, chapter 6, article 1 and issue such order or orders as he deems necessary to protect the public interest, or the commissioner may bring an action in any court of competent jurisdiction against such person to enjoin that person from continuing such violation.

E. The commissioner may adopt such rules, regulations and guidelines as he deems necessary to protect the public interest and to assure that all advertising and promotional practices with respect to land subject to the provisions of this article are not false or misleading.

F. It is unlawful for any owner, developer, agent or employee of any time-share project or other person with intent directly or indirectly to sell or lease time-share intervals subject to the provisions of this article to authorize, use, direct or aid in any advertising, communication, sales literature or promotional practice which violates this section.

G. This section does not apply to the owner or publisher of a newspaper, magazine or other publication of printed matter in which such advertisement appears or to the owner or operator of a radio or television station which disseminates such advertisement if the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser.

§ 32-2197.12. Recording of actions

A. If the commissioner issues a cease and desist order, obtains a court order enjoining further sales, issues an order of prohibition or suspends approval of a time-share project, the action shall be recorded in the book of deeds in the office of the county recorder in any county in which the time-share project property is located.

B. In the event of revocation of any of the orders which require recording in subsection A, an order of release shall be recorded in the same manner.

§ 32-2197.13. Power of commissioner to exempt time-share projects

A. The commissioner may by special order exempt from the provisions of this article time-share projects upon written petition and upon a showing by the petitioner, satisfactory to the commissioner, that compliance with the provisions of this article is not essential to the public interest or for the protection of buyers by reason of the special characteristics of the project.

B. Special orders issued pursuant to this section shall relate to specific projects.

C. A petition filed under this section shall be accompanied by an initial fee of three hundred dollars. A fee is not returnable irrespective of the nature of the action upon the petition.

§ 32–2197.14. Civil liabilities; prohibitions; limitations

A. If any part of the notice of intention filed pursuant to § 32–2197.01 contains an untrue statement of a material fact or omits a material fact required to be stated in such notice, the developer or agent is liable as provided in this section to any person who acquires a time-share interval in the project covered by the notice of intention during the period the notice of intention remained uncorrected, unless it is proved that at the time of such acquisition the person acquiring the time-share interval knew of such untruth or omission.

B. A developer or agent who sells or leases a time-share interval in a time-share project in violation of § 32–2107.07 or by means of a public report which contains an untrue statement of a material fact, or omits a material fact required to be stated in such report, is liable to the purchaser of such time-share interval as provided in this section.

C. No developer or agent shall, in selling or leasing, or offering to sell or lease, any time-share interval in a time-share project:

1. Employ any device, scheme or artifice to defraud.

2. Obtain money or property by means of a material misrepresentation with respect to any information included in the notice of intention or the public report or with respect to any other information pertinent to the time-share interval or time-share project and upon which the purchaser relies.

3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser.

D. Damages in any suit brought pursuant to this section are the difference between the amount paid for the time-share interval, together with the reasonable cost of improvements to such time-share interval, whichever of the following amount is less:

1. The value of the time-share interval and improvements as of the time such suit was brought.

2. The price at which such time-share interval was disposed of in a bona fide market transaction prior to the suit.

3. The price at which such time-share interval was disposed of in a bona fide market transaction after suit was brought, but prior to judgment.

E. In any action in which a violation of this section is established, the purchaser is also entitled to recover reasonable attorney fees as determined by the court. If a violation is not established, the court may award reasonable attorney fees to the defendant.

F. Every person who becomes liable to make any payment pursuant to this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

G. The amount recoverable pursuant to this section shall not exceed the sum of the purchase price of the time-share interval, the reasonable cost of improvements installed by the purchaser and reasonable court costs and attorney fees.

H. This section shall not be construed to preclude any other remedies that may exist at law or in equity.

I. An action shall not be maintained to enforce any liability created pursuant to subsection A or B of this section unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence. An action shall not be maintained to enforce any liability created pursuant to subsection C of this section unless brought within two years after the violation upon which it is based. Any such action under subsection [illegible] this section shall not be brought by a purchaser more than three years after the sale or lease to such purchaser.

§ 32–2197.15. Civil penalty

A. Any developer subject to the jurisdiction of the department who has violated any provision of this article or any rule, regulation or order promulgated by the commissioner, or who has deviated substantially from the provisions of a public report, or who has engaged in any unlawful practices defined in § 44–1522 with respect to the sale or lease of time-share intervals may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed five hundred dollars for each infraction.

B. Actions to recover penalties pursuant to this section shall be brought by the attorney general in the name of this state in the superior court in the county in which the violation occurred or in a county in which the commissioner maintains an office.

§ 32–2197.16. Violation; classification

Any person who knowingly violates any of the provisions of this article or the rules and regulations prescribed pursuant to this article or any person who knowingly, in a statement of record filed under or in a property report issued pursuant to this article, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein is guilty of a class 5 felony.

§ 32–2197.17. Exemptions

The provisions of §§ 44–1841 and 44–1842 shall not apply to a time-share project which has been issued a time-share public report pursuant to the provisions of this article or exempted by special order of the commissioner.

Sec. 2. Applicability

This act is not intended to apply to any time-share project, estate, use or interval already the subject of an existing public report issued by the department or any pending filing requesting the issuance of a public report for a time-share project, estate, use or interval which has been accepted for review by the department on or before the effective date of this act.

Sec. 3. Intent regarding termination

Notwithstanding the provisions of this act, the legislature intends that, if the provisions of title 41, chapter 20, Arizona Revised Statutes, operate to terminate the real estate department, any provisions regarding powers, duties, functions or personnel added or amended by this act terminate on the date of termination of the real estate department.

Sec. 4. Emergency

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor, April 14, 1982.

Filed in the Office of the Secretary of State, April 14, 1982.

FINANCIAL INSTITUTIONS—EXAMINATION ASSESSMENTS; ORGANIZATION; CREDIT UNIONS

CHAPTER 117

HOUSE BILL 2360

An Act relating to banks and financial institutions; prescribing assessments for certain financial institutions, examiners, and related expenses; prescribing contents of certificate of organization and bylaws;

Exhibit “2”

ARIZONA STATE SENATE

THIRTY-FIFTH LEGISLATURE

SECOND REGULAR SESSION

RECEIVED MAR 26 1982

MINUTES OF COMMITTEE ON COMMERCE & LABOR

DATE March 25, 1982 TIME 9:00 AM ROOM HR-3

The meeting was called to order at 9:05 AM by Chairman Mack and roll call was taken.

MEMBERS PRESENT

Senator Alston
Senator Kay
Senator Pena
Senator Rottas
Senator Runyan
Senator Sawyer
Senator Steiner
Senator Swink
Senator Mack, Chairman

MEMBERS ABSENT - None

OTHERS PRESENT - See attached list.

APPROVAL OF MINUTES

The minutes of the previous meeting were approved as distributed on a motion by Senator Steiner.

CONSIDERATION OF BILLS

H.B. 2346 - real estate time shares -- AMEND, DO PASS

Mr. R. B. Nicholls, representing the Real Estate Commission, explained that this legislation regulates the sale of time share real estate in Arizona. The bill was drafted by the Real Estate Department in conjunction with industry representatives and the Securities Division of the Corporation Commission. Parts of the bill were taken from provisions in other state statutes, most frequently California, as well as language from Arizona's subdivision laws. By late 1981, twelve states had adopted legislation dealing specifically with real estate time shares.

Mr. Paul Roshka, representing the Securities Division of the Corporation Commission, stated that the Securities Division has worked closely with the Real Estate Department in drafting the legislation before us and they endorse the bill.

Senator Runyan moved the bill with a Do Pass recommendation and then moved a proposed amendment. (Copy filed with original minutes.)

Senator Kay explained that a subcommittee was appointed to study S.B. 1175 - Model Real Estate Time Share Act and although the mood of of the subcommittee was favorable, it was decided that since a similar bill had been heard and worked in the House, it would be better to wait for the House bill to come over. He added

that the proposed amendment will assist the public in not being obligated to go through two state agencies when one state agency can handle the application.

Mr. Clague Van Slyke, counsel for Fairfield Communities (a major time share developer in the United States), testified in support of the bill and the proposed amendment.

The motion on the amendment carried.

Senator Runyan moved the second proposed amendment which contains technical corrections. The motion carried. (Copy of amendment filed with original minutes.)

Senator Runyan moved the bill as amended with a Do Pass recommendation.

Senator Sawyer contended that the definitions contained in section 32-2197 should be in section 32-2101. Discussion ensued to this point.

The motion on the Do Pass as amended carried.

EXECUTIVE APPOINTMENT

Patricia Fabritz - Contractors Recovery Fund Board

Ms. Fabritz described her personal and professional history and said that she feels she can be an asset to the Board.

Senator Steiner moved that the committee recommend to the Senate the confirmation of Ms. Fabritz' appointment to the Contractors Recovery Fund Board. The motion carried.

CONSIDERATION OF BILLS - Continued

H.B. 2212 - subdivision; definition -- AMEND, DO PASS

Mr. R. B. Nicholls, representing the Real Estate Commission, explained that this bill exempts commercial, industrial and agricultural purposes from the definition of a subdivision because these types of sales do not deal with the public. He added that he would have no objections to excluding agricultural if this conflicts with the ground water act.

Senator Steiner moved the bill with a Do Pass recommendation and then moved a proposed amendment. (Copy filed with original minutes.)

Mr. Jack DeBolske, representing the League of Arizona Cities and Towns, said that he has no objections to the bill but requested the following amendment to the amendment: Strike line 1; line 2, strike "strike 'agricultural lands,'; after "insert" insert "OR ANY TRANSFER OF"; line 3, strike the comma and insert "OR"; strike "OR AGRICULTURAL". He further suggested an amendment to the bill as follows: Page 5, line 34, after "or" strike "of".

Senator Steiner moved an amendment to the amendment as suggested by Mr. DeBolske. The motion carried.

Senator Steiner moved the bill as amended with a Do Pass recommendation. The motion carried.

H.B. 2209 - real estate broker or salesman licensure; removing character reference requirement -- DO PASS

Exhibit “3”

Mr. Tom Samuels, a pharmacist, and Mr. John Street, Executive Secretary of Arizona State Board of Pharmacy, spoke in support of the bill.

Mr. Goudinoff moved, seconded by Mr. Higuera, that H.B. 2441 as amended do pass. The motion carried by a roll call vote of 8-0-2-5. (See Attachment F)

H.B. 2385 - nursing home administrators; duties of board.
Chairman Kenney announced to the committee that he was holding this bill for one week to await the outcome of the Health Committee meeting.

H.B. 2346 - real estate time shares.
Chairman Kenney told the committee that this bill provides for the regulation of real estate time shares by the Real Estate Department.

Mr. Nicholls, Commissioner, Real Estate Department, informed the committee that time shares allow people to buy into condominiums for a period of two weeks or more. Mr. Nicholls also told the committee that Arizona is presently regulating the share sales by subdivision laws and up to the present time there have been no abuses but with the continued growth of this idea the state should have better regulation. Mr. Nichols further stated the people in the industry want to be regulated.

Mr. Burt Lewkowitz, Arizona Association of Realtors, testified in favor of the bill. Mr. Lewkowitz informed the committee that so far in Arizona there has been only two time share sales and people in the industry see what is coming and feel we need this bill.

Mr. Van Slyke, Attorney, Southern Arizona Home Builders, testified that this bill is needed and necessary to protect the consumer and the operator.

Mr. Hungerford moved, seconded by Mr. Goudinoff, that H.B. 2346 do pass.

Mr. Navghn Armstrong, Associate Counsel, C & A Companies, Inc., told the committee that his organization is opposed to this bill and further stated that so far only eight states have passed similar regulations. Mr. Armstrong declared he feels the committee should take more time to look at the provisions that will be necessary as this bill does not go far enough.

Mr. Baker moved, seconded by Mr. Goudinoff, that the bill be amended as follows:

1 Page 6, line 23, after the period, insert "IN THE EVENT OF DENIAL,

2 GROUNDS SHALL BE SET FORTH IN WRITING AT THE TIME OF DENIAL."

3 Page 12, line 13, after the period, insert "A TIME SHARE IS NOT A

4 SECURITY UNDER PROVISIONS OF TITLE 44, CHAPTER 12.7."

Mr. Baker moved, seconded by Mr. Goudinoff, that the amendment be adopted. The motion carried.

Mr. Sid Rosen, Attorney, briefly told the committee that he has no objection to this bill.

Mr. Hungerford moved, seconded by Mr. Goudinoff, that H.B. 2346 as amended do pass. The motion carried by a roll call vote of 9-0-2-4. (See Attachment G).

H.B. 2349 - nursing; educational qualifications of LPN's.
Mr. Kline advised the committee that this bill would prescribe minimum educational qualifications of licensure of licensed practical nurses.

Mr. Ratliff and Mr. Older, Arizona Hospital Association, spoke in opposition to this bill because it would increase the present scarity of LPN's.

Mrs. Shirley Rennicke, Arizona Board of Nursing, told the committee that the board neither supports nor opposes this bill.

Mr. Kline moved, seconded by Mr. Goudinoff, that H.B. 2349 do pass. The motion carried by a roll call vote of 8-3-0-4. (See Attachment H)

WITHOUT OBJECTION, THE MEETING ADJOURNED AT 4:30.

Exhibit “4”

By special permission of the Rules Committee, the Commerce Committee introduced the following bill: petroleum dealers; credit card fee.

H.B. 2197 - home solicitation sales; proof of cancellation

This bill had been rereferred to the Commerce Committee. Mr. Mac Dossey, Arizona Retailers Association, said that the reason this was done was that the language concerning the notification of cancellation had to conform to the United States Federal Trade Commission's language.

Mr. Meredith moved, seconded by Mr. Vukcevich, that H.B. 2197 do pass.

Mr. Meredith moved, seconded by Mr. Abril, that the proposed amendment be adopted. (Attachment A.) The motion carried.

Mr. Meredith moved, seconded by Mr. Vukcevich, that H.B. 2197 as amended do pass. The motion carried by a vote of 13 ayes, 2 absent. (Attachment B.)

H.B. 2083 - possessory lien; abandoned motor vehicles

Mr. McConnell, Chairman of the subcommittee which had been appointed to study this bill, reported that it had been substantially amended in subcommittee. (Attachment C.)

Mr. Tom Collier, Arizona Automobile Dealers Association, said that he had worked closely with the subcommittee and that the amendment would solve the problem the dealers had in determining whether or not a vehicle had in fact been abandoned.

Mr. Alan Rappoport, Channel 3, presented to the committee a video-tape of a recent showing of "Three on Your Side" which addressed the problem of vehicles being towed away which were not actually abandoned.

Mr. Hal Borhauer, Arizona Professional Towing and Recovery Association, reported that the towing industry was in favor of this legislation.

Mr. McConnell moved, seconded by Mr. Meredith, that H.B. 2083 do pass.

Mr. McConnell moved, seconded by Mr. Abril, that the proposed amendment (Attachment C.) be adopted. The motion carried.

Mr. McConnell moved, seconded by Mr. Meredith, that H.B. 2083 as amended do pass. The motion carried with a vote of 13 ayes, 2 absent. (Attachment D.)

H.B. 2346 - real estate time shares

Representative Don Kenney spoke on this bill saying that this bill was introduced by the Committee on Tourism, Professions and Occupations, of which he is Chairman, at the request of the Real Estate Department. He explained that the bill provided for the regulation of real estate time shares by the Department, as this method of occupancy of real property was becoming increasingly popular.

Mr. Robert Campbell, C&A Companies, said that he was in favor of the bill and thought it was well-constructed but had a concern on page 4, first line, where he felt a three-day recision period should replace the seven-day requirement.

Mr. Meredith pointed out that a three-day recision period was normal for all other contracts. He then asked how this bill compared to legislation in other states and Mr. Campbell said that in California, Nevada and Virginia they had legislation which provided for a three-day recision period.

Mr. Clague Van Slyke, Southern AHBA, spoke in favor of the bill and said that presently there was no regulation of any type in Arizona and because of land fraud problems in Arizona in the past, it would be beneficial if buyers could be told that there were regulations in Arizona governing this type of real estate transaction.

Mr. West asked if the seven-day recision period was agreeable and Mr. Van Slyke said that it was.

Mr. David Talamante, Department of Real Estate, spoke for the bill and said that it was tailored to fit into the Real Estate Department so it could be immediately enforced. He added that it was put together by members of the developers' industry as well as the Department and would satisfy both consumers and developers.

Mr. Burt Lewkowitz, Arizona Association of Realtors, stated that it was a bill which had been been approved by all the members of the Association.

Mrs. Carlson West moved, seconded by Mr. Meredith, that H.B. 2346 do pass.

Mrs. Carlson West moved, seconded by Mr. Meredith, that on page 4, line 1, strike "SEVENTH" and insert "THIRD" and on line, strike "CALENDAR" and insert "BUSINESS". The motion failed to carry by 9 noes, 6 ayes.

Referring to the previous motion that H.B. 2346 do pass, the motion carried by a vote of 9 ayes, 6 absent. (Attachment E.)

H.B. 2483 - procurement policy and reporting; state agencies

Mr. Skelly explained that this bill provided guidelines for purchasing of goods by a state agency. He said that the Committee on Government Operations had adopted an amendment (Attachment F.) and that he was proposing an amendment which was very similar. (Attachment G.)

Mr. West moved, seconded by Mr. Meredith, that H.B. 2483 do pass.

Mr. West moved, seconded by Mr. Meredith, that the proposed amendment be adopted. (Attachment G.) The motion carried.

Mr. West moved, seconded by Mr. Meredith, that H.B. 2483 as amended to pass. The motion carried with a vote of 9 ayes, 6 absent. (Attachment H.)

Exhibit "5"

ARIZONA STATE SENATE

Phoenix, Arizona

FACT SHEET FOR H.B. 2395

real estate timeshares; revisions

Purpose

Makes numerous changes to the statutes regulating real estate timeshares to update and streamline existing timeshare requirements and practices, enhance consumer protections and authorize payment of finder fees.

Background

The American Resort Development Association (ARDA), the national trade association of the timeshare industry, and the Arizona Department of Real Estate (Department) indicate that Arizona's existing real estate timeshare statutes, written in 1982, do not reflect the operation, practices or products of the timeshare industry of today. For the past year, ARDA has been working closely with the Department to update and revise current Arizona statutes regulating the timeshare industry and H.B. 2395 is the culmination of these efforts. The legislation, modeled after Illinois's real estate timeshare laws and Arizona's subdivision laws, incorporates modern variations of the timeshare product; streamlines existing timeshare requirements; increases and modernizes consumer protections; and authorizes payment of finder fees.

According to the ARDA and the Department, there is no anticipated fiscal impact to the state general fund associated with this measure.

Provisions

Public Reports

1. Clarifies that a person who sells or offers to sell a timeshare interest, attempts to solicit prospective purchasers to purchase a timeshare interest or creates a timeshare plan with an accommodation must register a notice of intent to sell and application for a public report with the Department.

2. Expands the required documents and information contained in an application for a public report for a timeshare plan to include the following:

   - a statement requiring the developer to notify the Commissioner if a timeshare plan accommodation may become subject to a tax or lien arising out of claims against other purchasers in the same timeshare plan. Allows the Commissioner to require such disclosure to prospective purchasers.
   - the name, street address, mailing address and telephone number of the designated broker used by the developer and a managing entity of the timeshare plan.
   - a public report that complies with the requirements authorizing the sale or lease of timeshare interests within a timeshare plan.

3. Allows, at the developer's request, the Commissioner to authorize the developer to conduct pre-sales of a timeshare plan before the issuance of a public report if the application for a public report is administratively complete. Sets forth the requirements to obtain an authorization to conduct pre-sales.

4. Allows the Commissioner to require the developer to fully disclose material changes in a timeshare plan in a prepared supplement to the public report for sales made after the material change and pending amendment to the public report and deliver the supplement to all prospective purchasers.

5. Requires a filing fee as established by rule to accompany an application to amend a timeshare public report.

6. Requires the public report approved by use by the developer authorizing the sale or lease of timeshare interests to be made available to each prospective purchaser in writing, CD-ROM or other electronic format approved by the Commissioner. Sets forth the required information to be included in the public report.

7. Allows the Commissioner to suspend or revoke the public report on certain circumstances.

Rescission Periods

8. Requires rescission rights to be conspicuously disclosed in a purchase agreement. Sets forth the placement and the required information to be included in the disclosure.

9. Allows the purchaser to cancel the purchase agreement without penalty or obligation within seven days after the purchaser signs the agreement.

10. Permits the rescission period disclosure in the purchase agreement to reflect the longer period of time in the event the developer allows for an extended rescission period.

11. Shortens, from five years to three years, the time period within which a purchaser or lessee may bring a rescission action.

Escrow and Trust Accounts

12. Requires the developer of a timeshare plan to deposit in an escrow or trust account all monies that are received during the purchaser's rescission period and be evidenced by an executive agreement between the agent and the developer.

13. Requires the developer, in the event that a timeshare interest is contracted to be sold but the construction of the timeshare property in which the timeshare interest is located has not been completed, when the rescission period expires to continue to maintain in an escrow or trust account all monies received from the purchaser under a purchase agreement either before or after the rescission period expires.

14. Outlines the disbursement of monies from the escrow account.

15. Allows the Commissioner to accept from the developer a surety bond, irrevocable letter of credit or other financial assurance in lieu of placing monies in escrow.

16. Requires the developer to make documents related to the escrow, trust account or obligations available to the Commissioner on request.

17. Requires the developer to maintain any disputed monies in the escrow account until either the developer receives a written agreement signed by all parties, or a civil action is filed, in which case the developer is required to deposit monies with the appropriate court.

18. Prohibits the release of any monies placed in escrow with respect to timeshare interests to the developer until the developer has provided satisfactory evidence to the Commissioner of one of the following:

    - the timeshare property is free and clear of any claims of the developer or other person having a blanket encumbrance against the timeshare property.
    - the holder of any blanket encumbrance has filed a subordination and notice to creditors document providing that such blanket encumbrance does not adversely affect and is subordinate to the interests of the owners of the timeshare interests.
    - the holder of any blanket encumbrance has transferred the subject accommodations to a nonprofit organization or owners' association for use by and benefit of the owners of the timeshare interests.
    - an alternative arrangement is made to protect the rights of the purchasers of the timeshare interests and is approved by the Commissioner.

Timeshare Interest Reservations

19. Stipulates that a party may enter into a timeshare interest reservation if the prospective seller has first provided notice to the Department of the intention to accept such reservations. Sets forth the required information to be included in the notice and the required statement on the reservation form.

20. Caps the reservation deposit for a single timeshare interest at twenty percent of the purchase price, which must be deposited into an escrow or trust account within one business day of its acceptance.

21. Requires the prospective seller to provide the prospective buyer copies of the public report and proposed purchase agreement for the reserved timeshare interest within 15 days of receipt of the public report.

22. Stipulates that the prospective seller and buyer have seven business days after the buyer's receipt of the public report and proposed purchase agreement to enter into a contract for the purchase of the timeshare interest, otherwise the reservation automatically terminates.

23. Allows a prospective buyer to cancel a timeshare interest reservation at any time prior to the execution of a purchase agreement by delivering written notice of the termination to the prospective seller. Requires the seller, or the escrow or trust account agent, to refund all deposits, less agreed upon fees, within five days.

24. Allows the Commissioner to deny, suspend or revoke authorization to accept timeshare interest reservations to any person who violates any real estate laws.

Developer Duties

25. Places on the developer the management and control of all aspects of the timeshare plan, including the promotion, advertising, contracting and closing.

26. Stipulates that the developer is responsible for the action of the association or managing entity while they are subject to the developer's control.

Promotional and Advertising Materials

27. Requires, within ten days after a request by the Commissioner, submissions of promotional and advertising materials relating to a sale, lease or use of timeshare interests to be filed by the developer.

28. Allows any proposed advertising not requested by the Commissioner to be filed for review and approval by the Commissioner.

29. Allows an interest in a timeshare plan, vacation ownership plan, fractional ownership plan, vacation club or other terms to be approved by the Commissioner on a case-by-case basis after the Commissioner finds that such terms clearly disclose to prospective purchasers the nature of the timeshare interest being offered.

30. Eliminates the requirement that a deed or title to the prize be held by a disinterested third party in a neutral escrow account pending award of the prize to the winner of a drawing or contest to solicit interest in or promote timeshare interests.

31. Eliminates the requirements that a developer who offers redemption certificates establish verification procedures and financial assurances to guarantee the delivery of the good or services promised in the certificate.

32. Requires the disclosure indicating that promotional and advertising materials are being used to promote the sale, lease or use of an interest in a timeshare plan to be provided as part of the initial advertising promotion contact with a prospective purchaser. Requires any other such disclosures to be provided prior to the prospective purchaser is required to pay any money or attend a sales presentation connected with the advertising promotion.

Finder Fees

33. Allows a developer to pay a finder fee to an unlicensed person who owns a timeshare interest in the developer's timeshare plan.

34. Caps the finder fee at $600 in credit or non-monetary compensation per 12-month period.

35. Requires the developer to maintain records of all finder fees paid for three years.

36. Prohibits an unlicensed person to advertise or promote the person's services in procuring or assisting to procure prospective timeshare interest purchasers.

Miscellaneous

37. Applies real estate timeshare laws to a timeshare property located in this state and timeshare plans with and without an accommodation or component site in this state if those timeshare plans are sold or offered to be sold to any individual in this state.

38. Allows a timeshare plan to be created in any accommodation, unless otherwise prohibited by law, zoning ordinance or regulation.

39. Requires all timeshare plans to maintain a one-to-one purchaser-to-accommodation ratio per calendar year.

40. Allows the Commissioner to physically inspect timeshare plans offered for sale or lease.

41. Provides exemptions from real estate timeshare laws.

42. Modifies, clarifies and defines terms associated with the real estate timeshare industry.

43. Makes numerous clarifying, technical and conforming changes.

44. Provides for a delayed effective date of January 1, 2002.

House Action

CED	1/29/01	6-0-2-2
3rd Read	3/12/01	54-0-6-0

Prepared by Senate Staff
March 23, 2001

Exhibit “6”

---------- DOCUMENT HEADER ----------
CORRECTED
5/03/01

---------- DOCUMENT HEADER ----------

ARIZONA HOUSE OF REPRESENTATIVES
Forty-fifth Legislature – First Regular Session

COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT

Minutes of Meeting
Monday, January 29, 2001
House Hearing Room 5 -- 1:30 p.m.

(Tape 1, Side A)

Chairman Leff called the meeting to order at 1:35 p.m. and the secretary noted attendance.

Members Present

Ms. Giffords
Mr. Hatch-Miller
Mr. Hershberger
Mr. Huffman
Mr. Loredo
Mr. May
Ms. Norris
Ms. Weason
Mrs. Somers, Vice Chairman
Mrs. Leff, Chairman

Committee Action

H.B. 2200 – HELD
H.B. 2352 – HELD
H.B. 2444 – DO PASS AMENDED (8-0-0-2)
H.B. 2438 – DO PASS AMENDED (9-0-0-1)
H.B. 2395 – DO PASS AMENDED (6-0-2-2)
H.B. 2367 – DISCUSSED AND HELD
H.B. 2241 – DO PASS AMENDED (7-0-0-3)
H.B. 2196 – DISCUSSED AND HELD
H.B. 2090 – DO PASS (9-0-0-2)
H.B. 2134 – DO PASS (7-0-2-1)

Speakers Present

Diane O'Dell, Majority Research Analyst
C. Vernon Lewis, Lobbyist, Arizona Association of Licensure of Private Investigators
Michele Ahlmer, Executive Director, Arizona Retailers' Association
Suzanne Gilstrap, Lobbyist, Arizona Multi-Housing Association
David Sands, Legislative Officer, Administrative Office of the Courts
Bob Walkup, Mayor, City of Tucson
Ed Denison, President, Arizona Soft.Net
Bob Hagen, President, GSPED Software and Information Industry Cluster
Names of persons recognized by the Chair who appeared in support of H.B. 2438 but did not speak: (Page 6)
Karen Peters, Attorney, American Resort Development Association (ARDA)
Justin Steltenpohl, Attorney, American Resort Development Association

Roy Tanney, Director of Subdivisions, Arizona Department of Real Estate
Kevin Herring, representing himself
Steve Biddle, Attorney, Littler Mendelson
Names of persons recognized by the Chair who appeared in support of H.B. 2367 but did not speak: (Page 9)
Kelly McDonald, Attorney, Arizona Trial Lawyers Association
Angela Erickson, Majority Intern
Carl John Martin, Structural Pest Control Commission
Barry Aarons, Consultant, Arizona Pest Control Association
Libby Weaver, Majority Intern
Scot Butler, Attorney, Manufactured Housing Industry of Arizona
Susan Brenton, Executive Director, Arizona Association of Manufactured Home Owners
Sally Bender, Assistant Director, County Supervisor's Association
Names of persons recognized by the Chair who appeared in support of H.B. 2196 but did not speak: (Page 10)
Charlie Stevens, Legislative counsel, Arizona Credit Union League
Name of person recognized by the Chair who appeared in opposition to H.B. 2134 but did not speak: (Page 12)

CONSIDERATION OF BILLS

H.B. 2200 – natural gas; public safety – HELD

Chairman Leff announced that H.B. 2200 would be held.

H.B. 2352 – credit cards; marketing information; nondisclosure – HELD

Chairman Leff announced that H.B. 2352 would be held.

H.B. 2444 – private investigations; exemptions; business – DO PASS AMENDED

Diane O'Dell, Majority Research Analyst, explained H.B. 2444 in summary (Attachment 1) and the 4-line Leff Amendment dated 1/25/01 (Attachment 2).

Chairman Leff addressed the Committee and stated that this bill pertains to the "mystery shoppers." She informed the Committee that very often, a business owner will employ someone to act as a shopper so that he can evaluate what is going on in the store and then get that information back to the business owner. This bill is requesting that those individuals be exempted from the private investigator licensure because they are not conducting any in-depth work the way a private investigator would and the efforts are purely meant as a tool for business owners to know what is going on in their stores. She stated that these storeowners should not have to pay the costly private investigations license fee.

C. Vernon Lewis, Lobbyist, Arizona Association of Licensure of Private Investigators, appeared in opposition to H.B. 2444. Mr. Lewis stated that they oppose the exemption not because the individuals involved would not be conducting private investigations of an in-depth level, but rather to ensure the public safety and welfare against incompetent, unqualified, unscrupulous or unfit persons engaging in activities of private investigations or private security services.

He stated that by definition, when these individuals make reports, they will be entering into that arena. He explained his appreciation for the great care taken in trying to address concerns brought out last

year. However, providing an exemption leaves an opening.

He pointed out that there are nine other exemptions under the statute; and, with the exception of the exemption for the owner of private property, all of the other areas of exemption have regulatory agencies, which watch over the activity in case there are any improprieties. For example, exempt insurance adjusters fall under regulation of the Department of Insurance.

Mr. Lewis stated his opinion that under current law, mystery shoppers can work in that environment through an attorney, as an employee of the attorney, as an employee of the store or as an employee of a private investigator and therefore, maybe avoid some of the high costs involved.

In response to inquiry from Mr. Huffman, Mr. Lewis explained that when the "mystery shopper" is in the store, he is there without the knowledge of the employees. He explained that when observation in a report is made upon an employee, under current fair credit reporting acts, there would have to be pre-authorization by the employee for it to be legal. If the person is not an individual hired by the store, he could be in violation. In response to further inquiry from Mr. Huffman, Mr. Lewis explained that, as a third party, the person hired then falls into a category of an observer of another individual and as such, he falls under federal credit reporting requirements. He is reporting back on the activities of another individual that he has no connection with in that store. That is the difference between an employee and a customer filling out a customer satisfaction questionnaire.

Mr. Lewis explained further that the difference is that an employee can report to a supervisor because he is a direct employee and there are different rules that pertain to direct employees. He explained that if a business owner directly hires an independent party to monitor his people, then that person would be an employee of that business and would not require the need of an exemption under this statute. However, if a business owner hires a person as an independent contractor because he works for someone else, he will then fall under the regulations of reporting just as a private investigator would.

In response to inquiry from Ms. Giffords, Mr. Lewis explained that a private investigator can make anywhere from $55 to $100 or more per hour depending on their expertise and the type of work.

Michele Ahlmer, Executive Director, Arizona Retailers' Association, appeared before the Committee and offered her support of H.B. 2444. Ms. Ahlmer stated that this bill would help retailers in their business operations because they do have people on staff that would be able to comply and it also helps with the secret shoppers.

Suzanne Gilstrap, Lobbyist, Arizona Multi-Housing Association, spoke in support of H.B. 2444. She explained that it is customary in her industry to employ shoppers in an effort to ensure that the fair housing law is being properly handled on sites as well as to observe how the agents are treating customers.

Vice Chairman Somers moved that H.B. 2444 do pass.

David Sands, Legislative Officer, Administrative Office of the Courts, addressed the Committee regarding the 4-line Leff Amendment dated 1/25/01 (Attachment 2).

He clarified that private investigator licensure is not required for persons or entities that are registered or certified by the Supreme Court and perform purely statutory duties. He stated that the issue arose primarily with respect to confidential intermediaries, who are certified by the Supreme Court and conduct searches and either share information or arrange contacts between adoptees and birth parents. There was a question from the Department of Public Safety about whether these individuals should be

licensed. However, they are already certified under the rules and standards adopted by the Supreme Court and they pay for their own fingerprint checks and criminal history information reports.

Vice Chairman Somers moved that the 4-line Leff Amendment dated 1/25/01 (Attachment 2) be adopted. The motion passed.

Vice Chairman Somers moved that H.B. 2444 as amended be given a do pass recommendation. The motion carried by a roll call vote of 8-0-0-2 (Attachment 3).

H.B. 2438 – appropriations; new economy cluster; infrastructure – DO PASS AMENDED

Diana O'Dell, Majority Research Analyst, explained H.B. 2438 in summary (Attachment 4) and the 6-line Somers Amendment dated 1/26/01 (Attachment 5).

Vice Chairman Somers explained that the passage of H.B. 2438 will impact the future of our economic development in the State of Arizona, both urban and rural. She explained that clusters were born about seven years ago when our state defined the cluster concept. Since then, many states have copied our model but unfortunately, we did not act on our creative vision while other states did. She explained that Arizona now finds itself in stiff competition for developing the very economic clusters that we have identified as those that best leverage the businesses and towns that exist in our state.

Ms. Somers pointed out that last session, our Legislature understood the vision that Arizona government must create the macro economic policies and programs that will allow the private sector to do what it needs to grow, thus contributing to make our state competitive in the new economy. Although a modest beginning in comparison to other states, $100,000 was funded for the clusters. If we are to help our clusters create the critical mass required to make them successful, we must act now. We have a window of opportunity that some would say is only two years and if we fail to act now, two years from now we will have an even harder job to catch up. She asked for the support of the Committee.

Bob Walkup, Mayor, City of Tucson, spoke in support of H.B. 2438. Mr. Walkup offered a brief background about himself, explaining that he was working for Hughes Aircraft in 1993 when the first clusters were established in Tucson.
He explained that he was the chairman of the aerospace cluster and one of his first jobs was the relocation of 6,000 people from California to Tucson. Mr. Walkup informed the Committee that the payback on that investment was returned within the first year.

Mr. Walkup then discussed Tucson's strategy for economic development and explained that he spent over 60 percent of his time as mayor pursuing the issue of economic development. He explained that he organized the Tucson region into what is known as the "round table" of economic development, which consists of the following four elements:

- Tactical Economic Development is the city, the chamber, the clusters, the airport authority, the university, etc. that are worried about retention, expansion and creation.
- GTECH is the strategic element of economic development, strategic recruitment or what is the top ten companies that are desired in Tucson
- Work Force Development
- Infrastructure

Mr. Walkup discussed GTSPED which is the Greater Tucson Strategic Partnership for Economic

Development and explained that its purpose is to monitor the strategic plan for accomplishment. He added that clusters play an extraordinary part in assisting the community in the preparation of the work force through the ability to educate and assist in the training process.

Ed Denison, President, Arizona Soft.Net, explained that he represents one of the seven technology clusters and one of the eleven overall clusters that make up the current GSPED organization. Mr. Denison explained that the clusters know best what is going on within that particular industry. He stated that although there is no desire to become the state's economic development engine, the intent is just to grow the specific clusters by including them as a part of GSPED and make them important to the exporting capabilities of the state. He informed the Committee that although Arizona created the concept of clusters back in the early 90's, we did not embellish the idea as we should have. He pointed out that New Mexico has created a $10 million training institute for technology, Florida and New York are currently funding clusters and Ohio has given $5 million to their information technology cluster alone. He added that the request is simply for minimal funds to organize the clusters and make them work better by creating projects such as work force development so that we can grow our own industries better.

In response to inquiry from Chairman Leff, Mr. Denison named the clusters within the technology sector as environmental technology, plastics, biotech, software, and information and advanced composites. Other clusters that are non-technology related are senior industries, tourism and transportation, food and fiber and minerals and mining.

Bob Hagen, President, GSPED Software and Information Industry Cluster, spoke in support of H.B. 2438. Mr. Hagen spoke to the Committee regarding how his cluster has spent the funds that have been made available to them so far. He explained that there was an appropriation made last year and while it was not very large, it was leveraged into about $2 million worth of impact on Southern Arizona. He discussed a training institute that is being created in Tucson and through a grant program made available by the Department of Commerce, three computer labs are in the process of being installed, complete with $150,000 worth of computer equipment.
Another project is Job/Career Path Program in which graduating seniors from area high schools are visited in an effort to make them aware of the different career paths. He added that his cluster is working very closely with the University of Arizona on a tech transfer program.

Additionally, a marketing program is in the works with a plan to have an advertising program in San Jose and the Silicon Valley. If that is successful, it will be carried forward to the Bellevue/Seattle Washington area. He explained that the whole purpose is to build a much higher degree of awareness of the high tech community in Arizona. He reported that they were able to leverage $17,500 worth of state funds into $100,000 advertising program that will be funded in part by the convention and visitors bureau, as well as Alaska Airlines.

In response to inquiry from Vice Chairman Somers, Mr. Hagen explained that the grant is an H1B grant, which takes the lower level Tele-services workers and trains them into the higher level software engineer type-jobs. At the same time, his cluster is working with Pima County Community Services on another grant that would take the low level Tele-services worker and train them into the mid-level skills. He responded to further inquiry and explained that when he visited Albuquerque last year, he learned that they had a high tech training institute in place for three years. They had trained 6,000 workers through that facility and interestingly enough, one half of those workers required soft skill or remedial skills or some other type of training before the actual training. He stated that the training facility in Tucson would help with that type of actual job training. He added that several communities including Safford, Sierra Vista and the Nogales area are interested in working with this program.

Names of persons recognized by the Chair who appeared in support of H.B. 2438 but did not speak:
Jim Norton, Lobbyist, Arizona Association of Industries
John Kaites, Arizona Soft.Net

Vice Chairman Somers moved that H.B. 2438 do pass.

Vice Chairman Somers moved that the 6-line Somers Amendment dated 1/26/01 (Attachment 5) be adopted. The motion carried.

Vice Chairman Somers moved that H.B. 2438 as amended be given a do pass recommendation. The motion carried by a roll call vote of 9-0-0-1 (Attachment 6).

H.B. 2395 – real estate timeshares; revisions – DO PASS AMENDED

Diana O'Dell, Majority Research Analyst, explained H.B. 2395 in summary (Attachment 7) and the 2-page Leff Amendment dated 1/26/01 (Attachment 8).

(Tape 1, Side B)

Karen Peters, Attorney, American Resort Development Association (ARDA), spoke to the Committee regarding H.B. 2395. Ms. Peters addressed inquiry from Ms. Weason and explained that the bill does not do anything to specifically change current law with respect to maintenance fees because those are set forth in the Declaration Dedication Provisions, which is received upon purchase of a timeshare. The only change is conforming to definitions.

Ms. Peters offered background information and explained that for the past few years, the industry has been focused on updating timeshare laws nationwide. Recently, legislation was adopted in the states of Florida and Illinois through the efforts of ARDA. She explained that ARDA Arizona approached the Department of Real Estate this past year about doing a similar update effort in Arizona and the efforts have been in effect since last summer.

Ms. Peters explained that the bill has three primary components, the first being the streamlining of the existing timeshare requirements. She stated that timeshares have matured significantly since the statutes were originally put in place in 1982 and so it was necessary to do an overhaul and add 25 new definitions that relate to the details of how a timeshare plan works. Ms. Peters read through the definitions and stated that the bill also covers finder fees and attempts to ensure uniform taxation of timeshare interests throughout the state. Specifically, it states that the county assessor shall value timeshares by the condominium method as opposed to looking at the individual sales price of timeshare units.

In response to inquiry from Ms. Weason, Ms. Peters explained that the provision is a new section of law and provides clarification where previously there was none. She deferred to Mr. Steltenpohl for further explanation.

Justin Steltenpohl, Attorney, American Resort Development Association, responded to inquiry from Ms. Weason and explained that a nonspecific timeshare interest is an interest in a timeshare in which there is no two-week window. Mr. Steltenpohl discussed the specifics of the liens.

Roy Tanney, Director of Subdivisions, Arizona Department of Real Estate, addressed inquiry from Ms. Giffords and explained that nothing has been left out of this bill. It is our existing timeshare law with

many additions and modifications to existing language.

Vice Chairman Somers moved that H.B. 2395 do pass.

Vice Chairman Somers moved that the 2-page Leff Amendment dated 1/26/01 (Attachment 8) be adopted. The motion carried.

Vice Chairman Somers moved that H.B. 2395 as amended be given a do pass recommendation. The motion carried by a roll call vote of 6-0-2-2 (Attachment 9).

H.B. 2367 – employer protection; background investigation – DISCUSSED AND HELD

Diana O'Dell, Majority Research Analyst, explained H.B. 2367 in summary (Attachment 10) and the 6-line Somers Amendment dated 1/26/01 (Attachment 11).

Vice Chairman Somers stated that she had spent the last 29 years of her career in human resources for large companies specializing in employment staffing. She explained that employers face an ever increasing burden of litigation regarding employment practices.
Today most employers refuse to give the kinds of references that would yield the information that would help employers with their selection process.

She pointed out that this bill would encourage employers to properly screen for appropriateness, would foster safer work places and would help employers who follow this proposed statute to avoid costly litigation. The cost of litigation is sometimes so onerous that employers, in spite of believing in their innocence, choose to settle a lawsuit rather than to fight it, believing it to be the lesser of two evils. She added that the passage of this bill would provide protection against costly litigation, while encouraging sound human resources and business practices.

Kevin Herring, representing himself, spoke in support of H.B. 2367. Mr. Herring testified that because of his experience in the human resources field, he was in total support of the bill. He stated his belief that the bill was critical because it is very difficult for employers who try very hard to hire good employees who can create a safe work environment. Unfortunately, it is sometimes difficult to get the information that is sought, even though an employer may make a good faith effort to obtain that information. He added that this bill offers protection to employers in the event they do get sued, giving them liability protection in terms of their hiring practices.

In response to inquiry from Mr. Huffman, Mr. Herring explained that this bill is patterned after the Florida statute. However, the main difference is that in the Florida statute, one of the listed criteria needed to be met but ours is much more stringent.

The driving record is really only relevant in the cases where driving is part of the job, and typically that is not something that would be looked at in a hiring situation. Because most employers act in good faith, it is difficult to say which next step would lead to additional information that would cause you to not hire the person. He stated that this bill allows for some reasonable efforts to conduct those additional steps without putting a substantial burden on small employers who may not have the resources that a larger corporation might have. He added that those screening procedures are very costly and could reach several hundred dollars per candidate.

Steve Biddle, Attorney, Littler Mendelson, appeared in support of H.B. 2367. Mr. Biddle stated that like the drug testing statute that Arizona has, this bill provides a "roadmap" for employers. It tells employers

if you do these things you will be considered to be reasonable, and when we are talking about negligent law, reasonableness is the keynote as to whether someone is negligent. This bill says if you do three out of six things, you have acted reasonable. He added that this is common law in all fifty states.

(Tape 2, Side A)

In response to inquiry from Mr. Huffman, Mr. Biddle answered that people can sue for anything at anytime and they do, regardless of whether it is frivolous. However, there are procedures and processes in the court system that allow those cases to be dismissed early, such as the filing of a Motion to Dismiss due to lack of circumstances, or a Motion for a Summary Judgment. This may prevent lawyers from filing lawsuits.

Names of persons recognized by the Chair who appeared in support of H.B. 2367 but did not speak:
Angela Williams, Society for Human Resource Management
Melissa Goodman, Human Resources Specialist, MPHRA
Brian DeVries, Human Resources Director, MPHRA
April Taylor, Recruitment Manager, MPHRA
Michelle Ahlmer, Executive Director, Arizona Retailers' Association

Kelly McDonald, Attorney, Arizona Trial Lawyers Association, spoke in support of H.B. 2367. Mr. Kelly stated that there really is no need for this legislation. He added that this bill as written does not speak to the issue of immunity. Further, it does not specify what the burden is of the individual who is responding to that presumption. Additionally, it places the burden on third parties who are the least able to do the screening that ought to be done by employers. Mr. Kelly stated that there is an anti-blacklisting statute that provides complete protection to former employees who in good faith and without malice, provides the required information. He suggested making the requirement in that area because that would address the concerns of the H.R. personnel. Additionally, he suggested making fingerprinting requirements.

Chairman Leff announced that H.B. 2367 would be held.

H.B. 2241 – structural pest control commission; fees – DO PASS AMENDED

Angela Erickson, Majority Intern, explained H.B. 2241 in summary (Attachment 12) and the 9-line Hershberger Amendment dated 1/26/01 (Attachment 13).

Carl John Martin, Structural Pest Control Commission, spoke in support of H.B. 2241. Mr. Martin stated that the Legislature passed a bill requiring state agencies that charge fees to the public to codify those fees. Previously, the Commission, under its general grant of authority, had written regulations in the administrative code allowing them to collect fees. However, this Legislature passed a law in 1999 stating that was no longer acceptable. Under the rules process, it was determined that general authority to collect fees was no longer suitable. Therefore, it was necessary to ask the Legislature to pass this legislation. He added that the 9-line Hershberger Amendment dated 1/26/01 (Attachment 13), puts in statute the exact same fees that exist in the administrative code.

Barry Aarons, Consultant, Arizona Pest Control Association, addressed the Committee and stated that he did not object to H.B. 2241 with the 9-line Hershberger Amendment dated 1/26/01 (Attachment 13).

Mr. Hershberger moved that H.B. 2241 do pass.

Mr. Hershberger moved that the 9-line Hershberger Amendment dated 1/26/01 (Attachment 13) be adopted. The motion carried.

Mr. Hershberger moved that H.B. 2241 as amended receive a do pass recommendation. The motion carried by a roll call vote of 7-0-0-3 (Attachment 14).

H.B. 2196 – county zoning; site units – DISCUSSED AND HELD.

Libby Weaver, Majority Intern, explained H.B. 2196 in summary (Attachment 15).

Scot Butler, Attorney, Manufactured Housing Industry of Arizona, appeared before the Committee support of H.B. 2196. Mr. Butler explained that this bill relates to housing affordability and home ownership. He explained that this bill is attempting to provide that with respect to a single family residence, whether it is site built or factory built and delivered to the site, zoning ordinances in the county should not discriminate against that. This refers to a person who bought a lot and wishes to place a home on that lot. He pointed out that virtually every other western state has enacted similar statute, the most recent being Nevada in 1999.

Mr. Butler explained that some counties may have ordinances with old definitions and do not recognize manufactured homes as single family residences. Other counties may choose to do esthetic standards. He added that there is also a provision in the bill to ensure that there is no interference with restrictive covenant.

In response to inquiry from Mr. Hatch-Miller, Mr. Butler explained that the construction standards would be controlled by applicable building code. In the case of a site built home, the Uniform Building Code would apply and in the case of a factory-built home, the building code would be the HUD code, which is a national code.

Susan Brenton, Executive Director, Arizona Association of Manufactured Home Owners, spoke in support of H.B. 2196. She explained that today's consumers have recognized the value of manufactured homes, which is realized by the fact that manufactured housing is becoming a significant part of the housing market in Arizona.

Sally Bender, Assistant Director, County Supervisor's Association, appeared before the Committee in opposition to H.B. 2196. Ms. Bender explained that she was not opposed to affordable housing or manufactured housing. However, the counties are opposed to the phrase "shall be treated the same," which is considered to be a preemption of a very long held zoning ability.

(Tape 2, Side B)

Ms. Bender pointed out that it is impossible to impose the same esthetic standards throughout a zone. Additionally, she explained the concern with the exterior materials and appearances of the manufactured homes. She also brought up the issue of down zoning.

Mr. Butler responded to the skirting issue and stated that if a county wanted to say that no skirting is allowed, that applies to all manufactured homes. He added that site built homes can be raised or built on the ground.

Names of persons recognized by the Chair who appeared in support of H.B. 2196 but did not speak:
Tom Farley, Lobbyist, Arizona Association of Realtors
Suzanne Gilstrap, Chairman, Arizona Housing Commission

Roger Wendt, President, Sunrise Home Service
Larry Richmond, Attorney, Gila County, Pinal County and Santa Cruz County
Leslie Thompson, Cochise County Supervisor, Cochise County
Bill Trottier, Executive Director, Manufactured Housing and Industry of Arizona

Chairman Leff announced that H.B. 2196 would be held.

H.B. 2090 – industrial commission; procedures – DO PASS

Libby Weaver, Majority Intern, explained H.B. 2090 in summary (Attachment 16).

Scot Butler, Attorney, Industrial Commission of Arizona, spoke in support of H.B. 2090. He stated that the Industrial Commission requested this bill to clean up a number of procedural and administrative matters relative to the commission. It was specifically drafted and worked on last year to ensure that it would not interfere with the agreement not to engage in major substantive changes to the workers' compensation law that was part of S.B. 1410 two years ago. At the request of the Chairman, Mr. Butler discussed the provisions in H.B. 2090.

Vice Chairman Somers moved that H.B. 2090 do pass.
The motion passed by a roll call vote of 8-0-0-2 (Attachment 17).

H.B. 2134 – credit card transactions; receipts; fraud – DO PASS

Libby Weaver, Majority Intern, explained H.B. 2134 in summary (Attachment 18).

Charlie Stevens, Legislative Counsel, Arizona Credit Union League, appeared before the Committee to offer his support of H.B. 2134. He made himself available for questions.

Michelle Ahlmer, Executive Director, Arizona Retailers' Association, addressed the Committee regarding H.B. 2134. She stated her position as neutral because of the cost associated with this legislation. She explained that the cost involved is with respect to the terminal, which varies. The hand held terminals were common many years ago, the electronic terminals print receipts and are more common today as is electronic terminal that transmits, etc. She explained that if a storeowner has a terminal that cannot be programmable, the storeowner has to purchase one that is. She added that in the event that the storeowner has a terminal that can be programmed, there is a cost associated with that programming. This is a cost that cannot be passed onto the consumer. She explained that the cost to lease a terminal that has the computerized printing is from $1,700 to $1,900 per month.

In response to inquiry from Mr. May, Ms. Ahlmer explained that the differentiation was with respect to the hand held terminals and the computerized terminals. She added that any opposition to H.B. 2134 would be reflected in her new knowledge that not all terminals will do

this and not only would there be a programming fee for a terminal with that capability, but also there are more than one type of computerized terminals.

In response to further inquiry from Mr. May, Ms. Ahlmer explained that there would be a cost based upon the contract with the individual retailer that has to do with the volume of sales. They may offer service beyond regular processing such as paper, service calls, etc. She explained further that the cost to the individual retailer is included in the contract that would be negotiated. If there is a sales portion of the contract that is negotiated, because any kind of mandated change in the way that the terminal

operates could fall back on the retailer and the cost would depend on the contract that they have and according to the credit card processor.

Name of person recognized by the Chair who appeared in opposition to H.B. 2134 but did not speak:
Michael Green, Attorney, Arizona Restaurant Association

Mr. May stated that the purpose of the bill is to protect consumer privacy and confidentiality. This has already been done in California, as well as many Arizona vendors. In response to inquiry from Chairman Leff, Mr. May explained why the handwritten copies were exempt. Chairman Leff suggested including the handwritten copies and suggested Mr. May generate an amendment to that point.

Ms. Ahlmer responded to inquiry from Vice Chairman Somers and explained that there will be a shift as national retailers all change to meet California standards. However, the small operations may not change so it is difficult to say how soon it will happen.

Diana O'Dell, Majority Research Analyst, read Chapter 10, Article 7, in the Consumer Fraud Statute #441522. She read further that "it is the intent of the Legislature that in construing the provisions of the Consumer Fraud Statute, that the courts may use as a guide interpretations given by the Federal Trade Commission and the federal courts."

Mr. May moved that H.B. 2134 do pass.
The motion carried by a roll call vote of 7-0-2-1 (Attachment 19).

Without objection, the meeting adjourned at 5:30 p.m.

Robyne Richards, Committee Secretary

(Original minutes, attachments and tapes are on file in the Chief Clerk's Office.)

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COMMITTEE ON COMMERCE AND
ECONOMIC DEVELOPMENT

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January 29, 2001

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