

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
March 23, 2017	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Branch Update

FROM:

Jerry Landau, Government Affairs Director
Amy Love, Deputy Director of Government Affairs

DISCUSSION:

Mr. Landau will update members on the 2017 Legislative Session.

RECOMMENDED COUNCIL ACTION:

Update and action on legislature.

Arizona Judicial Council

Legislative Update ~ March 2017

HB2220: electronic files; access; official record (Rep. Bowers)

<https://apps.azleg.gov/BillStatus/GetDocumentPdf/448221>

If the presiding judge of the superior court provides electronic access or filing privileges to an attorney, the privilege must also be provided to a pro se litigants. However, access is limited to records of cases in which the attorney is a party or the attorney of record for one of the parties and records related to the pro se litigant's case.

HB2237: forcible entry; detainer; prohibited rules (Rep. Farnsworth)

<https://apps.azleg.gov/BillStatus/GetDocumentPdf/447529>

Prohibits a state agency and an individual court from adopting or enforcing a rule or policy that requires a mandatory or technical form for providing notice for pleadings relating to a forcible entry, forcible detainer, or special detainer (FED). The form of any notice or pleading that meets statutory requirements for content and formatting is sufficient to provide notice and to pursue an action for forcible entry, forcible, or special detainer.

These prohibitions are applied to A.R.S. § 12-1175 (general court processes for FED), A.R.S. § 33-361 (violation of lease by tenant), A.R.S. § 33-1305 (Residential Landlord and Tenant Act), A.R.S. § 33-1404 (Mobile Home Park Residential Landlord and Tenant act), and A.R.S. § 33-2101 (Recreational Vehicle Long-Term Rental Space Act).

HB2295: attorney regulation; assessments; membership dues (Rep. Kern)

<https://apps.azleg.gov/BillStatus/GetDocumentPdf/449747>

Directs all statutory authority over regulatory functions relating to the practice of law, including the regulation of attorneys, to the Supreme Court of Arizona. Allows the Court to charge a mandatory assessment from each attorney for purposes of supporting the court's regulatory function; however, the functions are limited to:

- admitting an attorney to the practice of law
- maintaining attorney records, trust accounts, the client protection fund, the legal specialization board, and appointment of conservatorships
- enforcing the ethical rules that govern attorneys
- regulation of continued legal education
- preventing the unauthorized practice of law

Permits the State Bar of Arizona to collect and use voluntary membership dues for activities not included in the mandatory functions. The collection of voluntary dues must be separate from mandatory assessments and the Court must incorporate any mandatory assessment money into its budget.

Prohibits any other entity than Supreme Court of Arizona from collecting mandatory assessments from an attorney. If the State Bar of Arizona accepts any mandatory assessment monies collected by the court to carry out the mandatory functions then it must comply with the open records law, make a list of all expenditures made with mandatory assessment monies available to the public, and provide an independent audit of the expenditures. Outlines protocol for public requests for access to Bar records.

HB2515: governor appointees; criminal records check (Rep. Farnsworth)

<https://apps.azleg.gov/BillStatus/GetDocumentPdf/449577>

A person who applies to the Governor for a position on the Superior Court as well as a prospective nominee for any state office that is appointed by the Governor is required to submit a full set of fingerprints to the Governor in order to obtain a state and federal criminal records check. This bill does not apply to an applicant who has submitted a full set of fingerprints to the Supreme Court, Commission on Appellate Court, or Commission on Trial Court Appointments.

The Arizona Department of Public Safety must exchange the fingerprint data with the Federal Bureau of Investigation. The Arizona Department of Public Safety is allowed to exchange criminal records history information with the Governors for prospective gubernatorial nominees, appointees, and employees.

SB1072: administrative decisions; scope of review (Sen. Peterson)

<https://apps.azleg.gov/BillStatus/GetDocumentPdf/449994>

Requires the court, when reviewing a final administrative decision, to reverse, modify or vacate and remand the agency action if the court determines the action was contrary to law. The court is required to decide all questions of law which includes, the interpretation of a constitutional or statutory provision or rule adopted by an agency, without regard to any previous determination that may have been made on the question in an administrative action. These requirements apply to any action for judicial review of an agency action.

If the action arises out of Title 20, Chapter 15, Article 2 (Health Care Appeals), the court is required to affirm the agency action unless after reviewing the administrative record and supplementing evidence at the evidentiary hearing the court concludes the action is not supported by substantial evidence, contrary to law, arbitrary and capricious,

or an abuse of discretion. Excludes Arizona Corporation Commission actions from this process.

A court is required to award fees and other expenses to any party other than the state or a city, town or county that prevails by an adjudication on the merits in a civil action brought by a party to challenge a rule, decision, guideline, enforcement policy or procedure of a state agency or commission that is statutorily exempt from the rulemaking requirements of Title 41, Chapter 6 on the grounds that the rule, decision, guideline, enforcement policy or procedure is not authorized by statute or violates the Constitution of the United states or this state.

SB1148: electronic signatures; wills; trusts (Sen. Worlsey)

<https://apps.azleg.gov/BillStatus/GetDocumentPdf/446094>

Provides for the creation of electronic wills and electronic trusts and allows them to be signed, authenticated and witnessed through electronic means. Details what provisions an electronic will or electronic trust must contain to be valid and also provides the acceptable authentication methods. The bill allows for a video recording or other electronic record as admissible evidence in court and defines terms. It provides that both electronic wills and electronic trusts will be deemed executed in Arizona if the electronic will or electronic trust states that it is governed by the laws of Arizona or if the person who executes the electronic will or electronic trust states that it is being executed pursuant to the laws of Arizona. Allows the signing of wills to be witnessed by a two-way audio and video conference call and modifies the proposed form of wills to allow signatures be logically associated with electronic wills.

Below is a more detailed list of when an electronic record can be used as admissible evidence, the provisions that an electronic will and electronic trust must contain to be valid, and the authentication methods for electronic wills and electronic trusts.

Electronic Wills

Subject to court rule, this bill allows a video recording or other electronic record as admissible evidence of the following:

- The proper execution of a will;
- The intentions of the testator;
- The mental state or capacity of the testator;
- The authenticity of the will; and
- Matters that are determine by the court to be relevant to the probate of a will.

This bill provides that an electronic will must:

- Contain the electronic signature of the testator;
- Contain the date and time of the electronic signature;

- Include an authentication method that is attached to or logically associated with the electronic will to identify the testator;
- Be created and maintained in such a manner that any alteration of the electronic is detectable; and
- Otherwise meet the statutory requirements of electronic transactions.

Requires the authentication method of an electronic will to include a copy of the testator's valid driver license, passport or other government-issued identification card and at least one of the following:

- A knowledge-based authentication method;
- A digital certificate using a public key infrastructure;
- A physical device such as a smart card, a universal serial bus plug-in or some other type of token;
- A biometric identification, including a fingerprint, a retinal scan, voice or facial recognition or a video of the testator;
- Electronic notarization that is accordance with applicable law; and
- Some other commercially reasonable method.

Electronic Trusts

Allows for the video recording or other electronic record as evidence of the following:

- The proper execution of a trust instrument;
- The intentions of the settlor;
- The mental state or capacity of the settlor;
- The authenticity of the trust instrument; and
- Matters that are determined by the court to be relevant to the administration of a trust.

This bill provides that an electronic trust must:

- Contain the electronic signature of the settlor;
- Contain the date and time of the electronic signature;
- Contain the terms of the trust, including any amendments to the terms of the trust;
- Include an authentication method that is attached to or logically associated with the electronic trust instrument to identify the settlor;
- Be created and maintained in such a manner that any alteration of the electronic trust is detectable; and
- Otherwise meet the statutory requirements of electronic transactions.

Requires the authentication method of an electronic trust to include a copy of the settlor's valid driver license, passport or other government-issued identification card and at least one of the following:

- A knowledge-based authentication method;
- A digital certificate using a public key infrastructure;
- A physical device such as a smart card, a universal serial bus plug-in or some other type of token;
- A biometric identification, including a fingerprint, a retinal scan, voice or facial recognition or a video recording of the testator; and
- Some other commercially reasonable method.