

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 239

HOUSE BILL 2192

AN ACT

AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 20; RELATING TO STRUCTURED SETTLEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Title 12, Arizona Revised Statutes, is amended by adding
3 chapter 20, to read:

4 CHAPTER 20

5 STRUCTURED SETTLEMENTS

6 ARTICLE 1. GENERAL PROVISIONS

7 12-2901. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ANNUITY ISSUER" MEANS AN INSURER THAT HAS ISSUED A CONTRACT THAT
10 IS USED TO FUND PERIODIC PAYMENTS UNDER A STRUCTURED SETTLEMENT.

11 2. "DEPENDENTS" INCLUDES A PAYEE'S SPOUSE AND MINOR CHILDREN AND ALL
12 OTHER FAMILY MEMBERS AND OTHER PERSONS FOR WHOM THE PAYEE IS LEGALLY
13 OBLIGATED TO PROVIDE SUPPORT, INCLUDING ALIMONY.

14 3. "DISCOUNTED PRESENT VALUE" MEANS THE PRESENT VALUE OF FUTURE
15 PAYMENTS, AS DETERMINED BY DISCOUNTING THE PAYMENTS TO THE PRESENT USING THE
16 MOST RECENTLY PUBLISHED APPLICABLE FEDERAL RATE FOR DETERMINING THE PRESENT
17 VALUE OF AN ANNUITY, AS ISSUED BY THE UNITED STATES INTERNAL REVENUE SERVICE.

18 4. "GROSS ADVANCE AMOUNT" MEANS THE SUM PAYABLE TO THE PAYEE OR FOR
19 THE PAYEE'S ACCOUNT AS CONSIDERATION FOR A TRANSFER OF STRUCTURED SETTLEMENT
20 PAYMENT RIGHTS BEFORE ANY REDUCTIONS FOR TRANSFER EXPENSES OR OTHER
21 DEDUCTIONS TO BE MADE FROM THE CONSIDERATION.

22 5. "INDEPENDENT PROFESSIONAL ADVICE" MEANS THE ADVICE OF AN ATTORNEY,
23 CERTIFIED PUBLIC ACCOUNTANT, ACTUARY OR OTHER LICENSED PROFESSIONAL ADVISER.

24 6. "INTERESTED PARTIES" MEANS, WITH RESPECT TO ANY STRUCTURED
25 SETTLEMENT, THE PAYEE, ANY BENEFICIARY IRREVOCABLY DESIGNATED UNDER THE
26 ANNUITY CONTRACT TO RECEIVE PAYMENTS FOLLOWING THE PAYEE'S DEATH, THE ANNUITY
27 ISSUER, THE STRUCTURED SETTLEMENT OBLIGOR AND ANY OTHER PARTY THAT HAS
28 CONTINUING RIGHTS OR OBLIGATIONS UNDER THE STRUCTURED SETTLEMENT.

29 7. "NET ADVANCE AMOUNT" MEANS THE GROSS ADVANCE AMOUNT LESS THE
30 AGGREGATE AMOUNT OF THE ACTUAL AND ESTIMATED TRANSFER EXPENSES REQUIRED TO
31 BE DISCLOSED UNDER THIS CHAPTER.

32 8. "PAYEE" MEANS AN INDIVIDUAL WHO RECEIVES TAX-FREE DAMAGE PAYMENTS
33 UNDER A STRUCTURED SETTLEMENT AND WHO PROPOSES TO MAKE A TRANSFER OF PAYMENT
34 RIGHTS UNDER THE STRUCTURED SETTLEMENT.

35 9. "PERIODIC PAYMENTS" INCLUDES BOTH RECURRING PAYMENTS AND SCHEDULED
36 FUTURE LUMP SUM PAYMENTS.

37 10. "QUALIFIED ASSIGNMENT AGREEMENT" MEANS AN AGREEMENT THAT PROVIDES
38 FOR A QUALIFIED ASSIGNMENT WITHIN THE MEANING OF SECTION 130 OF THE INTERNAL
39 REVENUE CODE AS DEFINED BY SECTION 42-1001.

40 11. "RESPONSIBLE ADMINISTRATIVE AUTHORITY" MEANS, WITH RESPECT TO A
41 STRUCTURED SETTLEMENT, ANY GOVERNMENT AUTHORITY THAT IS VESTED BY LAW WITH
42 EXCLUSIVE JURISDICTION OVER THE SETTLED CLAIM THAT IS RESOLVED BY THE
43 STRUCTURED SETTLEMENT.

44 12. "SETTLED CLAIM" MEANS THE ORIGINAL TORT CLAIM OR WORKERS'
45 COMPENSATION CLAIM THAT IS RESOLVED BY A STRUCTURED SETTLEMENT.

1 13. "STRUCTURED SETTLEMENT" MEANS AN ARRANGEMENT FOR PERIODIC PAYMENT
2 OF DAMAGES FOR PERSONAL INJURIES OR SICKNESS THAT IS ESTABLISHED BY
3 SETTLEMENT OR JUDGMENT IN RESOLUTION OF A TORT CLAIM OR FOR PERIODIC PAYMENTS
4 IN SETTLEMENT OF A WORKERS' COMPENSATION CLAIM.

5 14. "STRUCTURED SETTLEMENT AGREEMENT" MEANS THE AGREEMENT, JUDGMENT,
6 STIPULATION OR RELEASE THAT EMBODIES THE TERMS OF A STRUCTURED SETTLEMENT.

7 15. "STRUCTURED SETTLEMENT OBLIGOR" MEANS, WITH RESPECT TO ANY
8 STRUCTURED SETTLEMENT, THE PARTY THAT HAS THE CONTINUING PERIODIC PAYMENT
9 OBLIGATION TO THE PAYEE UNDER A STRUCTURED SETTLEMENT AGREEMENT OR A
10 QUALIFIED ASSIGNMENT AGREEMENT.

11 16. "STRUCTURED SETTLEMENT PAYMENT RIGHTS" MEANS THE RIGHT TO RECEIVE
12 PERIODIC PAYMENTS UNDER A STRUCTURED SETTLEMENT, WHETHER FROM THE SETTLEMENT
13 OBLIGOR OR THE ANNUITY ISSUER, IF ANY OF THE FOLLOWING APPLY:

14 (a) THE PAYEE, THE STRUCTURED SETTLEMENT OBLIGOR, THE ANNUITY ISSUER
15 OR ANY OTHER INTERESTED PARTY IS DOMICILED IN THIS STATE.

16 (b) THE STRUCTURED SETTLEMENT AGREEMENT WAS APPROVED BY A COURT OR
17 RESPONSIBLE ADMINISTRATIVE AUTHORITY IN THIS STATE.

18 (c) THE LAWS OF THIS STATE EXPRESSLY GOVERN THE STRUCTURED SETTLEMENT
19 AGREEMENT.

20 17. "TERMS OF THE STRUCTURED SETTLEMENT" INCLUDE, WITH RESPECT TO ANY
21 STRUCTURED SETTLEMENT, THE TERMS OF THE STRUCTURED SETTLEMENT AGREEMENT, THE
22 ANNUITY CONTRACT, ANY QUALIFIED ASSIGNMENT AGREEMENT AND ANY ORDER OR OTHER
23 APPROVAL OF ANY COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY OR OTHER
24 GOVERNMENT AUTHORITY THAT AUTHORIZED OR APPROVED THE STRUCTURED SETTLEMENT.

25 18. "TRANSFER" MEANS ANY SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR
26 OTHER FORM OF ALIENATION OR ENCUMBRANCE OF STRUCTURED SETTLEMENT PAYMENT
27 RIGHTS. TRANSFER DOES NOT INCLUDE THE CREATION OR PERFECTION OF A SECURITY
28 INTEREST IN STRUCTURED SETTLEMENT PAYMENT RIGHTS UNDER A BLANKET SECURITY
29 AGREEMENT ENTERED INTO WITH AN INSURED DEPOSITORY INSTITUTION, IN THE ABSENCE
30 OF ANY ACTION TO REDIRECT THE STRUCTURED SETTLEMENT PAYMENTS TO SUCH INSURED
31 DEPOSITORY INSTITUTION, OR AN AGENT OR SUCCESSOR IN INTEREST THEREOF, OR
32 OTHERWISE TO ENFORCE THE BLANKET SECURITY INTEREST AGAINST THE STRUCTURED
33 SETTLEMENT PAYMENT RIGHTS.

34 19. "TRANSFER AGREEMENT" MEANS THE AGREEMENT THAT PROVIDES FOR
35 TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS FROM A PAYEE TO A
36 TRANSFEREE.

37 20. "TRANSFER EXPENSES" MEANS ALL EXPENSES OF A TRANSFER REQUIRED
38 UNDER THE TRANSFER AGREEMENT TO BE PAID BY THE PAYEE OR DEDUCTED FROM THE
39 GROSS ADVANCE AMOUNT, INCLUDING COURT FILING FEES, ATTORNEY FEES, ESCROW
40 FEES, LIEN RECORDATION FEES, JUDGMENT AND LIEN SEARCH FEES, FINDERS' FEES,
41 COMMISSIONS AND OTHER PAYMENTS TO A BROKER OR OTHER INTERMEDIARY. TRANSFER
42 EXPENSES DOES NOT INCLUDE PREEXISTING OBLIGATIONS OF THE PAYEE PAYABLE FOR
43 THE PAYEE'S ACCOUNT FROM THE PROCEEDS OF A TRANSFER.

44 21. "TRANSFEREE" MEANS A PARTY ACQUIRING OR PROPOSING TO ACQUIRE
45 STRUCTURED SETTLEMENT PAYMENT RIGHTS THROUGH A TRANSFER.

12-2902. Payment rights; transfer conditions

A. DIRECT OR INDIRECT TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS SHALL NOT BE EFFECTIVE AND A STRUCTURED SETTLEMENT OBLIGOR OR ANNUITY ISSUER SHALL NOT BE REQUIRED TO MAKE ANY PAYMENT DIRECTLY OR INDIRECTLY TO ANY TRANSFEREE OF STRUCTURED SETTLEMENT PAYMENT RIGHTS UNLESS THE TRANSFER HAS BEEN AUTHORIZED IN ADVANCE IN A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION OR RESPONSIBLE ADMINISTRATIVE AUTHORITY.

B. BEFORE ISSUING A FINAL ORDER PURSUANT TO SUBSECTION A, THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY SHALL EXPRESSLY FIND THAT:

1. THE TRANSFER COMPLIES WITH THE REQUIREMENTS OF THIS CHAPTER AND WILL NOT CONTRAVENE ANY OTHER APPLICABLE LAW.

2. NOT LESS THAN THREE DAYS BEFORE THE DATE ON WHICH THE PAYEE SIGNED THE TRANSFER AGREEMENT, THE TRANSFEREE PROVIDED TO THE PAYEE A DISCLOSURE STATEMENT IN BOLD TYPE, NO SMALLER THAN FOURTEEN POINTS, SETTING FORTH:

(a) THE AMOUNTS AND DUE DATES OF THE STRUCTURED SETTLEMENT PAYMENTS TO BE TRANSFERRED.

(b) THE AGGREGATE AMOUNT OF THE PAYMENTS.

(c) THE DISCOUNTED PRESENT VALUE OF THE PAYMENTS TO BE TRANSFERRED, WHICH SHALL BE IDENTIFIED AS THE CALCULATION OF CURRENT VALUE OF THE TRANSFERRED STRUCTURED SETTLEMENT PAYMENTS UNDER FEDERAL STANDARDS FOR VALUING ANNUITIES, AND THE AMOUNT OF THE APPLICABLE FEDERAL RATE USED IN CALCULATING THE DISCOUNTED PRESENT VALUE.

(d) THE GROSS ADVANCE AMOUNT THAT IS PAYABLE TO THE PAYEE IN EXCHANGE FOR THE PAYMENTS.

(e) AN ITEMIZED LISTING OF ALL APPLICABLE TRANSFER EXPENSES, OTHER THAN ATTORNEY FEES AND RELATED DISBURSEMENTS PAYABLE IN CONNECTION WITH THE TRANSFEREE'S APPLICATION FOR APPROVAL OF THE TRANSFER, AND THE TRANSFEREE'S BEST ESTIMATE OF THE AMOUNT OF ATTORNEY FEES AND RELATED DISBURSEMENTS.

(f) THE NET ADVANCE AMOUNT THAT IS PAYABLE TO THE PAYEE AFTER DEDUCTION OF ALL COMMISSIONS, FEES, COSTS, EXPENSES AND CHARGES LISTED IN SUBDIVISION (e) OF THIS PARAGRAPH.

(g) A STATEMENT THAT THE PAYEE HAS THE RIGHT TO CANCEL THE TRANSFER AGREEMENT, WITHOUT PENALTY OR FURTHER OBLIGATION, NOT LATER THAN THE THIRD BUSINESS DAY AFTER THE DATE THE AGREEMENT IS SIGNED BY THE PAYEE.

(h) THE AMOUNT OF ANY PENALTY AND THE AGGREGATE AMOUNT OF ANY LIQUIDATED DAMAGES INCLUSIVE OF PENALTIES THAT ARE PAYABLE BY THE PAYEE IN THE EVENT OF ANY BREACH OF THE TRANSFER AGREEMENT BY THE PAYEE.

3. THE TRANSFER IS IN THE BEST INTEREST OF THE PAYEE, TAKING INTO ACCOUNT THE WELFARE AND SUPPORT OF THE PAYEE'S DEPENDENTS.

4. THE PAYEE HAS BEEN ADVISED IN WRITING BY THE TRANSFEREE TO SEEK INDEPENDENT PROFESSIONAL ADVICE REGARDING THE TRANSFER AND HAS EITHER RECEIVED THE ADVICE OR KNOWINGLY WAIVED THE ADVICE IN WRITING.

5. IF THE TRANSFER WOULD CONTRAVENE ANY APPLICABLE STATUTE OR THE ORDER OF ANY COURT OR OTHER GOVERNMENT AUTHORITY.

1 C. FOLLOWING A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS UNDER
2 THIS CHAPTER:

3 1. THE STRUCTURED SETTLEMENT OBLIGOR AND THE ANNUITY ISSUER SHALL, AS
4 TO ALL PARTIES EXCEPT THE TRANSFEREE, BE DISCHARGED AND RELEASED FROM ANY AND
5 ALL LIABILITY FOR THE TRANSFERRED PAYMENTS.

6 2. THE TRANSFEREE SHALL BE LIABLE TO THE STRUCTURED SETTLEMENT OBLIGOR
7 AND THE ANNUITY ISSUER:

8 (a) IF THE TRANSFER CONTRAVENES THE TERMS OF THE STRUCTURED
9 SETTLEMENT, FOR ANY TAXES INCURRED BY SUCH PARTIES AS A CONSEQUENCE OF THE
10 TRANSFER.

11 (b) FOR ANY OTHER LIABILITIES OR COSTS, INCLUDING REASONABLE COSTS AND
12 ATTORNEY FEES, ARISING FROM COMPLIANCE BY SUCH PARTIES WITH THE ORDER OF THE
13 COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY OR ARISING AS A CONSEQUENCE OF
14 THE TRANSFEREE'S FAILURE TO COMPLY WITH THIS ACT.

15 12-2903. Jurisdiction: transfer approval

16 A. THE SUPERIOR COURT HAS JURISDICTION OVER ANY APPLICATION FOR
17 AUTHORIZATION TO TRANSFER STRUCTURED SETTLEMENT PAYMENT RIGHTS PURSUANT TO
18 SECTION 12-2902.

19 B. NOT LESS THAN TWENTY DAYS BEFORE THE SCHEDULED HEARING ON ANY
20 APPLICATION FOR AUTHORIZATION TO TRANSFER STRUCTURED SETTLEMENT PAYMENT
21 RIGHTS, THE TRANSFEREE SHALL FILE WITH THE COURT A NOTICE OF THE PROPOSED
22 TRANSFER AND THE APPLICATION FOR ITS AUTHORIZATION AND SHALL SERVE A COPY OF
23 THE NOTICE ON ANY OTHER GOVERNMENT AUTHORITY THAT PREVIOUSLY APPROVED THE
24 STRUCTURED SETTLEMENT, ON ALL INTERESTED PARTIES. THE NOTICE SHALL INCLUDE:

25 1. A COPY OF THE TRANSFEREE'S APPLICATION.

26 2. A COPY OF THE TRANSFER AGREEMENT.

27 3. A COPY OF THE DISCLOSURE STATEMENT REQUIRED UNDER SECTION 12-2902.

28 4. A LISTING OF EACH OF THE PAYEE'S DEPENDENTS, TOGETHER WITH EACH
29 DEPENDENT'S AGE.

30 5. A STATEMENT THAT ANY INTERESTED PARTY IS ENTITLED TO SUPPORT,
31 OPPOSE OR OTHERWISE RESPOND TO THE TRANSFEREE'S APPLICATION, EITHER IN PERSON
32 OR BY COUNSEL, BY SUBMITTING WRITTEN COMMENTS TO THE COURT OR OTHER
33 RESPONSIBLE ADMINISTRATIVE AUTHORITY OR BY PARTICIPATING IN THE HEARING.

34 6. THE TIME AND PLACE OF THE HEARING AND THE MANNER IN WHICH AND THE
35 TIME BY WHICH WRITTEN RESPONSES TO THE APPLICATION MUST BE FILED IN ORDER TO
36 BE CONSIDERED BY THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY. AN
37 INTERESTED PARTY SHALL HAVE AT LEAST FIFTEEN DAYS AFTER SERVICE OF THE
38 TRANSFEREE'S NOTICE IN WHICH TO RESPOND.

39 12-2904. Waiver; penalties

40 A. THE PROVISIONS OF THIS CHAPTER SHALL NOT BE WAIVED.

41 B. A PAYEE WHO PROPOSES TO MAKE A TRANSFER OF STRUCTURED SETTLEMENT
42 PAYMENT RIGHTS SHALL NOT INURE ANY PENALTY, FORFEIT ANY APPLICATION FEE OR
43 OTHER PAYMENT OR OTHERWISE INCUR ANY LIABILITY TO THE PROPOSED TRANSFEREE
44 BASED ON ANY FAILURE OF THE TRANSFER TO SATISFY THE CONDITIONS SPECIFIED IN
45 SECTION 12-2902.

1 C. ANY TRANSFER AGREEMENT ENTERED INTO ON OR AFTER THE EFFECTIVE DATE
2 OF THIS ACT BY A PAYEE WHO RESIDES IN THIS STATE SHALL PROVIDE THAT DISPUTES
3 UNDER THE TRANSFER AGREEMENT, INCLUDING ANY CLAIM THAT THE PAYEE HAS BREACHED
4 THE AGREEMENT, SHALL BE DETERMINED IN AND UNDER THE LAWS OF THIS STATE. A
5 TRANSFER AGREEMENT SHALL NOT AUTHORIZE THE TRANSFEREE OR ANY OTHER PARTY TO
6 CONFESS JUDGMENT OR CONSENT TO ENTRY OF JUDGMENT AGAINST THE PAYEE.

7 D. A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS SHALL NOT EXTEND
8 TO ANY PAYMENTS THAT ARE LIFE CONTINGENT UNLESS, BEFORE THE DATE ON WHICH THE
9 PAYEE SIGNS THE TRANSFER AGREEMENT, THE TRANSFEREE HAS ESTABLISHED AND HAS
10 AGREED TO MAINTAIN PROCEDURES REASONABLY SATISFACTORY TO THE ANNUITY ISSUER
11 AND THE STRUCTURED SETTLEMENT OBLIGOR FOR BOTH OF THE FOLLOWING:

12 1. PERIODICALLY CONFIRMING THE PAYEE'S SURVIVAL.

13 2. GIVING THE ANNUITY ISSUER AND THE STRUCTURED SETTLEMENT OBLIGOR
14 PROMPT WRITTEN NOTICE IF THE PAYEE DIES.

15 E. COMPLIANCE WITH THE REQUIREMENTS AND FULFILLMENT OF THE CONDITIONS
16 SET FORTH IN THIS CHAPTER IS THE SOLE RESPONSIBILITY OF THE TRANSFEREE IN ANY
17 TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS, AND THE STRUCTURED
18 SETTLEMENT OBLIGOR OR THE ANNUITY ISSUER IS NOT RESPONSIBLE FOR, OR ANY
19 LIABILITY ARISING FROM, NON-COMPLIANCE WITH THE REQUIREMENTS OR FAILURE TO
20 FULFILL THE REQUIREMENTS OF THIS CHAPTER.

21 Sec. 2. Construction

22 Title 12, chapter 20, Arizona Revised Statutes, as added by this act,
23 shall not be construed to authorize any transfer of structured settlement
24 payment rights in contravention of applicable law or to give effect to any
25 transfer of structured settlement payment rights that is invalid under
26 applicable law.

27 Sec. 3. Applicability

28 Title 12, chapter 20, Arizona Revised Statutes, as added by this act, applies
29 to any transfer of structured settlement payment rights under a transfer
30 agreement that is entered into on or after the effective date of this act,
31 except that this act shall not imply that any transfer under a transfer
32 agreement that is reached before the effective date of this act is effective.

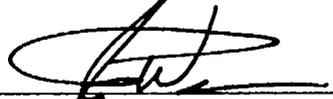
APPROVED BY THE GOVERNOR MAY 20, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2002.

Passed the House April 8, 2002,

by the following vote: 40 Ayes,

10 Nays, 10 Not Voting

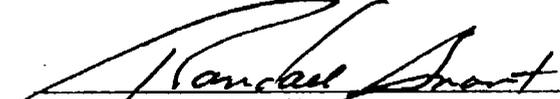

Speaker of the House

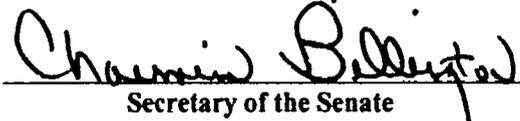

Chief Clerk of the House

Passed the Senate April 30, 2002,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting


President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of
_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2192

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

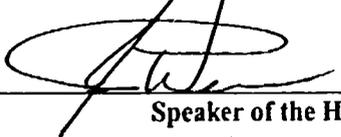
Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

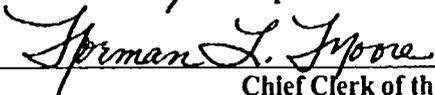
May 16, 2002,

by the following vote: 48 Ayes,

8 Nays, 4 Not Voting



Speaker of the House



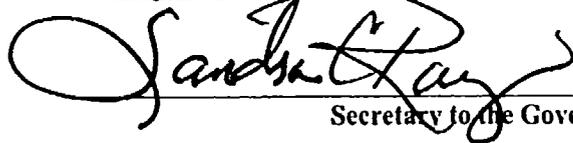
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of May, 2002

at 3:00 o'clock P M.



Secretary to the Governor

Approved this 20th day of

May, 2002,

at 10:12 o'clock A M.



Governor of Arizona

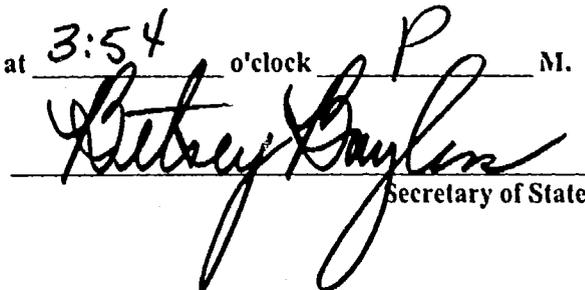
H.B. 2192

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2002

at 3:54 o'clock P M.



Secretary of State