

Senate Engrossed

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 62

# SENATE BILL 1439

AN ACT

AMENDING SECTIONS 42-5062, 42-5064, 42-5070 AND 42-5073, ARIZONA REVISED  
STATUTES; RELATING TO TRANSACTION PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5062, Arizona Revised Statutes, is amended to  
3 read:

4 42-5062. Transporting classification

5 A. The transporting classification is comprised of the business of  
6 transporting for hire persons, freight or property by motor vehicle,  
7 railroads or aircraft from one point to another point in this state. The  
8 transporting classification does not include:

9 1. Transporting for hire persons, freight or property by motor  
10 carriers subject to a fee prescribed in title 28, chapter 16, article 4 or by  
11 light motor vehicles subject to a fee under title 28, chapter 15, article 4.

12 2. The business of transporting for hire persons traveling in air  
13 commerce by aircraft if taxation of the business is preempted by federal law.

14 3. Ambulances or ambulance services provided under title 48 or  
15 certified pursuant to title 36, chapter 21.1 or provided by a city or town in  
16 a county with a population of less than one hundred fifty thousand persons as  
17 determined in the most recent United States decennial census.

18 4. Public transportation program services for the dial-a-ride programs  
19 and special needs transportation services.

20 5. Transporting freight or property for hire by a railroad operating  
21 exclusively in this state if the transportation comprises a portion of a  
22 single shipment of freight or property, involving more than one railroad,  
23 either from a point in this state to a point outside this state or from a  
24 point outside this state to a point in this state. For purposes of this  
25 paragraph, "a single shipment" means the transportation that begins at the  
26 point at which one of the railroads first takes possession of the freight or  
27 property and continues until the point at which one of the railroads  
28 relinquishes possession of the freight or property to a party other than one  
29 of the railroads.

30 6. ARRANGING TRANSPORTATION AS A CONVENIENCE OR SERVICE TO A PERSON'S  
31 CUSTOMERS IF THAT PERSON IS NOT OTHERWISE ENGAGED IN THE BUSINESS OF  
32 TRANSPORTING PERSONS, FREIGHT OR PROPERTY FOR HIRE. THIS EXCEPTION DOES NOT  
33 APPLY TO BUSINESSES THAT DISPATCH VEHICLES PURSUANT TO CUSTOMER ORDERS AND  
34 SEND THE BILLINGS AND RECEIVE THE PAYMENTS ASSOCIATED WITH THAT ACTIVITY,  
35 INCLUDING WHEN THE TRANSPORTATION IS PERFORMED BY THIRD PARTY INDEPENDENT  
36 CONTRACTORS. FOR THE PURPOSES OF THIS PARAGRAPH, "ARRANGING" INCLUDES  
37 BILLING FOR OR COLLECTING TRANSPORTATION CHARGES FROM A PERSON'S CUSTOMERS ON  
38 BEHALF OF THE PERSONS PROVIDING THE TRANSPORTATION.

39 B. The tax base for the transporting classification is the gross  
40 proceeds of sales or gross income derived from the business, except that the  
41 following shall be deducted from the tax base:

42 1. The gross proceeds of sales or gross income derived from  
43 transporting for hire persons, freight or property by a railroad pursuant to  
44 a contract with another railroad that is also considered to be engaged in the  
45 businesses of transporting persons, freight or property for hire if the other

1 railroad is liable for the tax on gross proceeds of sales or gross income  
2 attributable to the transportation.

3 2. The gross proceeds of sales or gross income derived from business  
4 activity that is properly included in any other business classification under  
5 this article and that is taxable to the person engaged in that  
6 classification, but the gross proceeds of sales or gross income to be  
7 deducted shall not exceed the consideration paid to the person conducting the  
8 activity.

9 3. The gross proceeds of sales or gross income derived from a business  
10 activity that is arranged by the person who is subject to tax under this  
11 section and that is not taxable to the person conducting the activity due to  
12 an exclusion, exemption or deduction under this section or section 42-5073,  
13 but the gross proceeds of sales or gross income to be deducted shall not  
14 exceed the consideration paid to the person conducting the activity.

15 4. The gross proceeds of sales or gross income derived from business  
16 activity that is arranged by a person who is subject to tax under this  
17 section and that is taxable to another person under this section who conducts  
18 the activity, but the gross proceeds of sales or gross income to be deducted  
19 shall not exceed the consideration paid to the person conducting the  
20 activity.

21 Sec. 2. Section 42-5064, Arizona Revised Statutes, is amended to read:  
22 42-5064. Telecommunications classification; definitions

23 A. The telecommunications classification is comprised of the business  
24 of providing intrastate telecommunications services. The telecommunications  
25 classification does not include:

26 1. Sales of intrastate telecommunications services by a cable  
27 television system as defined in section 9-505 or by a microwave television  
28 transmission system that transmits television programming to multiple  
29 subscribers and that is operated pursuant to 47 Code of Federal Regulations  
30 parts 21 and 74.

31 2. Sales of internet access services to the person's subscribers and  
32 customers.

33 B. The tax base for the telecommunications classification is the gross  
34 proceeds of sales or gross income derived from the business, including the  
35 gross income derived from tolls, subscriptions and services on behalf of  
36 subscribers or from the publication of a directory of the names of  
37 subscribers. However, the gross proceeds of sales or gross income derived  
38 from the following shall be deducted from the tax base:

39 1. Sales of intrastate telecommunications services to:

40 (a) Other persons engaged in businesses classified under the  
41 telecommunications classification for use in such business.

42 (b) A direct broadcast satellite television or data transmission  
43 service that operates pursuant to 47 Code of Federal Regulations parts 25 and  
44 100 for use in its direct broadcast satellite television or data transmission

1 operation by a facility described in section 42-5061, subsection B, paragraph  
2 16, subdivision (b).

3 2. End user common line charges established by federal communications  
4 commission regulations (47 Code of Federal Regulations section 69.104(a)).

5 3. Carrier access charges established by federal communications  
6 commission regulations (47 Code of Federal Regulations sections 69.105(a)  
7 through 69.118).

8 4. Sales of direct broadcast satellite television services pursuant to  
9 47 Code of Federal Regulations parts 25 and 100 by a direct broadcast  
10 satellite television service that operates pursuant to 47 Code of Federal  
11 Regulations parts 25 and 100.

12 5. Telecommunications services purchased with a prepaid calling card,  
13 or a prepaid authorization number for telecommunications services, that is  
14 taxable under section 42-5061.

15 C. A PERSON THAT IS ENGAGED IN A TRANSIENT LODGING BUSINESS SUBJECT TO  
16 TAXATION UNDER SECTION 42-5070 AND THAT PROVIDES TELEPHONE, FAX OR INTERNET  
17 ACCESS SERVICES TO ITS CUSTOMERS AT AN ADDITIONAL CHARGE, WHICH IS SEPARATELY  
18 STATED ON THE CUSTOMER INVOICE, IS CONSIDERED TO BE ENGAGED IN BUSINESS  
19 SUBJECT TO TAXATION UNDER THIS SECTION FOR THE PURPOSES OF TAXING THE GROSS  
20 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM PROVIDING THOSE SERVICES.

21 ~~C.~~ D. The gross proceeds of sales or gross income derived from a  
22 bundled transaction of services that are taxable pursuant to section 42-5023  
23 are subject to the following:

24 1. A telecommunications service provider who can reasonably identify  
25 the portion of the sales price of the bundled transaction derived from  
26 charges for nontaxable services is subject to tax only on the gross proceeds  
27 of sales or gross income derived from the taxable services. For the purposes  
28 of this section, the telecommunications service provider may elect to  
29 reasonably identify the portion of the sales price of the bundled transaction  
30 derived from charges for nontaxable services by using allocation percentages  
31 derived from the telecommunications service provider's entire service area,  
32 including territories outside of this state. On request, the department may  
33 require the telecommunications service provider to provide this allocation  
34 information. The reasonableness of the allocation is subject to audit by the  
35 department.

36 2. Notwithstanding sections 42-1118, 42-1120 and 42-1121, the  
37 telecommunications service provider shall waive the right to file a claim for  
38 a refund of taxes paid on the bundled transaction if the taxes paid are based  
39 on the allocation percentage the telecommunications service provider had  
40 determined to be reasonable at the beginning of the tax period at issue.

41 3. The burden of proof is on the telecommunications service provider  
42 to establish that the gross proceeds of sales or gross income is derived from  
43 charges for nontaxable services.

1           D- E. For the purposes of this section:

2           1. "Bundled transaction" means a sale of multiple services in which  
3 both of the following apply:

4           (a) The sale consists of both taxable and nontaxable services.

5           (b) The telecommunications service provider charges a customer one  
6 sales price for all services that are sold instead of separately charging for  
7 each individual service.

8           2. "Internet" means the computer and telecommunications facilities  
9 that comprise the interconnected worldwide network of networks that employ  
10 the transmission control protocol or internet protocol, or any predecessor or  
11 successor protocol, to communicate information of all kinds by wire or radio.

12           3. "Internet access" means a service that enables users to access  
13 content, information, electronic mail or other services over the  
14 internet. Internet access does not include telecommunications services  
15 provided by a common carrier.

16           4. "Intrastate telecommunications services" means transmitting signs,  
17 signals, writings, images, sounds, messages, data or other information of any  
18 nature by wire, radio waves, light waves or other electromagnetic means if  
19 the information transmitted originates and terminates in this state.

20           Sec. 3. Section 42-5070, Arizona Revised Statutes, is amended to read:

21           42-5070. Transient lodging classification; definition

22           A. The transient lodging classification is comprised of the business  
23 of operating, for occupancy by transients, a hotel or motel, including an  
24 inn, tourist home or house, dude ranch, resort, campground, studio or  
25 bachelor hotel, lodging house, rooming house, apartment house, dormitory,  
26 public or private club, mobile home or house trailer at a fixed location or  
27 other similar structure, and also including a space, lot or slab which is  
28 occupied or intended or designed for occupancy by transients in a mobile home  
29 or house trailer furnished by them for such occupancy. ~~For purposes of this~~  
30 ~~subsection "transient" means any person who either at the person's own~~  
31 ~~expense or at the expense of another obtains lodging space or the use of~~  
32 ~~lodging space on a daily or weekly basis, or on any other basis for less than~~  
33 ~~thirty consecutive days.~~

34           B. The transient lodging classification does not include:

35           1. Operating a convalescent home or facility, home for the aged,  
36 hospital, jail, military installation or fraternity or sorority house or  
37 operating any structure exclusively by an association, institution,  
38 governmental agency or corporation for religious, charitable or educational  
39 purposes, if no part of the net earnings of the association, corporation or  
40 other entity inures to the benefit of any private shareholder or individual.

41           2. A lease or rental of a mobile home or house trailer at a fixed  
42 location or any other similar structure, and also including a space, lot or  
43 slab which is occupied or intended or designed for occupancy by transients in  
44 a mobile home or house trailer furnished by them for such occupancy for  
45 thirty or more consecutive days.

1           3. Leasing or renting four or fewer rooms of an owner-occupied  
2 residential home, together with furnishing no more than a breakfast meal, to  
3 transient lodgers at no more than a fifty per cent average annual occupancy  
4 rate.

5           C. The tax base for the transient lodging classification is the gross  
6 proceeds of sales or gross income derived from the business, except that the  
7 tax base does not include gross proceeds of sales or gross income derived  
8 from business activity that is properly included in another business  
9 classification under this article and that is taxable to the person engaged  
10 in that business classification, but the gross proceeds of sales or gross  
11 income to be deducted shall not exceed the consideration paid to the person  
12 conducting the activity.

13           D. FOR THE PURPOSES OF THIS SECTION, THE TAX BASE FOR THE TRANSIENT  
14 LODGING CLASSIFICATION DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS  
15 INCOME DERIVED FROM:

16           1. TRANSACTIONS OR ACTIVITIES THAT ARE NOT LIMITED TO TRANSIENTS AND  
17 THAT WOULD NOT BE TAXABLE IF ENGAGED IN BY A PERSON NOT SUBJECT TO TAX UNDER  
18 THIS ARTICLE.

19           2. TRANSACTIONS OR ACTIVITIES THAT ARE NOT LIMITED TO TRANSIENTS AND  
20 THAT WOULD NOT BE TAXABLE IF ENGAGED IN BY A PERSON SUBJECT TO TAXATION UNDER  
21 SECTION 42-5062 OR 42-5073 DUE TO AN EXCLUSION, EXEMPTION OR DEDUCTION.

22           3. COMMISSIONS PAID TO A PERSON THAT IS ENGAGED IN TRANSIENT LODGING  
23 BUSINESS SUBJECT TO TAXATION UNDER THIS SECTION BY A PERSON PROVIDING  
24 SERVICES OR PROPERTY TO THE CUSTOMERS OF THE PERSON ENGAGING IN THE TRANSIENT  
25 LODGING BUSINESS.

26           ~~D.~~ E. The department shall separately account for revenues collected  
27 under the transient lodging classification for purposes of section 42-5029,  
28 subsection D, paragraph 4, subdivision ~~(f)~~ (b).

29           F. FOR THE PURPOSES OF THIS SECTION "TRANSIENT" MEANS ANY PERSON WHO  
30 EITHER AT THE PERSON'S OWN EXPENSE OR AT THE EXPENSE OF ANOTHER OBTAINS  
31 LODGING SPACE OR THE USE OF LODGING SPACE ON A DAILY OR WEEKLY BASIS, OR ON  
32 ANY OTHER BASIS FOR LESS THAN THIRTY CONSECUTIVE DAYS.

33           Sec. 4. Section 42-5073, Arizona Revised Statutes, is amended to read:  
34 42-5073. Amusement classification

35           A. The amusement classification is comprised of the business of  
36 operating or conducting theaters, movies, operas, shows of any type or  
37 nature, exhibitions, concerts, carnivals, circuses, amusement parks,  
38 menageries, fairs, races, contests, games, billiard or pool parlors, bowling  
39 alleys, public dances, dance halls, boxing and wrestling matches, skating  
40 rinks, tennis courts, except as provided in subsection B of this section,  
41 video games, pinball machines, sports events or any other business charging  
42 admission or user fees for exhibition, amusement or entertainment, including  
43 the operation or sponsorship of events by a tourism and sports authority  
44 under title 5, chapter 8. For purposes of this section, admission or user  
45 fees include, but are not limited to, any revenues derived from any form of

1 contractual agreement for rights to or use of premium or special seating  
2 facilities or arrangements. The amusement classification does not include:

3 1. Activities or projects of bona fide religious or educational  
4 institutions.

5 2. Private or group instructional activities. For THE purposes of  
6 this paragraph, "private or group instructional activities" includes, but is  
7 not limited to, performing arts, martial arts, gymnastics and aerobic  
8 instruction.

9 3. The operation or sponsorship of events by the Arizona exposition  
10 and state fair board or county fair commissions.

11 4. A musical, dramatic or dance group or a botanical garden, museum or  
12 zoo that is qualified as a nonprofit charitable organization under section  
13 501(c)(3) of the United States internal revenue code and if no part of its  
14 net income inures to the benefit of any private shareholder or individual.

15 5. Exhibition events in this state sponsored, conducted or operated by  
16 a nonprofit organization that is exempt from taxation under section  
17 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the  
18 organization is associated with major league baseball teams or a national  
19 touring professional golfing association and no part of the organization's  
20 net earnings inures to the benefit of any private shareholder or individual.

21 6. Operating or sponsoring rodeos that feature primarily farm and  
22 ranch animals in this state and that are sponsored, conducted or operated by  
23 a nonprofit organization that is exempt from taxation under section  
24 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal  
25 revenue code and no part of the organization's net earnings inures to the  
26 benefit of any private shareholder or individual.

27 7. Sales of admissions to intercollegiate football contests if the  
28 contests are both:

29 (a) Operated by a nonprofit organization that is exempt from taxation  
30 under section 501(c)(3) of the internal revenue code and no part of the  
31 organization's net earnings inures to the benefit of any private shareholder  
32 or individual.

33 (b) Not held in a multipurpose facility that is owned or operated by  
34 the tourism and sports authority pursuant to title 5, chapter 8.

35 8. Activities and events of, or fees and assessments received by, a  
36 homeowners organization from persons who are members of the organization or  
37 accompanied guests of members. For THE purposes of this paragraph,  
38 "homeowners organization" means a mandatory membership organization comprised  
39 of owners of residential property within a specified residential real estate  
40 subdivision development or similar area and established to own property for  
41 the benefit of its members where both of the following apply:

42 (a) No part of the organization's net earnings inures to the benefit  
43 of any private shareholder or individual.

1 (b) The primary purpose of the organization is to provide for the  
2 acquisition, construction, management, maintenance or care of organization  
3 property.

4 9. Activities and events of, or fees received by, a nonprofit  
5 organization that is exempt from taxation under section 501(c)(6) of the  
6 internal revenue code if the organization produces, organizes or promotes  
7 cultural or civic related festivals or events and no part of the  
8 organization's net earnings inures to the benefit of any private shareholder  
9 or individual.

10 10. ARRANGING AN AMUSEMENT ACTIVITY AS A SERVICE TO A PERSON'S  
11 CUSTOMERS IF THAT PERSON IS NOT OTHERWISE ENGAGED IN THE BUSINESS OF  
12 OPERATING OR CONDUCTING AN AMUSEMENT THEMSELVES OR THROUGH OTHERS. THIS  
13 EXCEPTION DOES NOT APPLY TO BUSINESSES THAT OPERATE OR CONDUCT AMUSEMENTS  
14 PURSUANT TO CUSTOMER ORDERS AND SEND THE BILLINGS AND RECEIVE THE PAYMENTS  
15 ASSOCIATED WITH THAT ACTIVITY, INCLUDING WHEN THE AMUSEMENT IS PERFORMED BY  
16 THIRD PARTY INDEPENDENT CONTRACTORS. FOR THE PURPOSES OF THIS PARAGRAPH,  
17 "ARRANGING" INCLUDES BILLING FOR OR COLLECTING AMUSEMENT CHARGES FROM A  
18 PERSON'S CUSTOMERS ON BEHALF OF THE PERSONS PROVIDING THE AMUSEMENT.

19 B. The tax base for the amusement classification is the gross proceeds  
20 of sales or gross income derived from the business, except that the following  
21 shall be deducted from the tax base:

22 1. The gross proceeds of sales or gross income derived from  
23 memberships, including initiation fees, which provide for the right to use a  
24 health or fitness establishment or a private recreational establishment, or  
25 any portion of an establishment, including tennis and other racquet courts at  
26 that establishment, for participatory purposes for twenty-eight days or more  
27 and fees charged for use of the health or fitness establishment or private  
28 recreational establishment by bona fide accompanied guests of members, except  
29 that this paragraph does not include additional fees, other than initiation  
30 fees, charged by a health or fitness establishment or a private recreational  
31 establishment for purposes other than memberships which provide for the right  
32 to use a health or fitness establishment or private recreational  
33 establishment, or any portion of an establishment, for participatory purposes  
34 for twenty-eight days or more and accompanied guest use fees.

35 2. Amounts that are exempt under section 5-111, subsection H.

36 3. The gross proceeds of sales or gross income derived from membership  
37 fees, including initiation fees, that provide for the right to use a  
38 transient lodging recreational establishment, including golf courses and  
39 tennis and other racquet courts at that establishment, for participatory  
40 purposes for twenty-eight days or more, except that this paragraph does not  
41 include additional fees, other than initiation fees, that are charged by a  
42 transient lodging recreational establishment for purposes other than  
43 memberships and that provide for the right to use a transient lodging  
44 recreational establishment or any portion of the establishment for  
45 participatory purposes for twenty-eight days or more.

1           4. The gross proceeds of sales or gross income derived from sales to  
2 persons engaged in the business of transient lodging classified under section  
3 42-5070, if all of the following apply:

4           (a) The persons who are engaged in the transient lodging business sell  
5 the amusement to another person for consideration.

6           (b) The consideration received by the transient lodging business is  
7 equal to or greater than the amount to be deducted under this subsection.

8           (c) The transient lodging business has provided an exemption  
9 certificate to the person engaging in business under this section.

10          5. The gross proceeds of sales or gross income derived from:

11          (a) Business activity that is properly included in any other business  
12 classification under this article and that is taxable to the person engaged  
13 in that classification, but the gross proceeds of sales or gross income to be  
14 deducted shall not exceed the consideration paid to the person conducting the  
15 activity.

16          (b) Business activity that is arranged by the person who is subject to  
17 tax under this section and that is not taxable to the person conducting the  
18 activity due to an exclusion, exemption or deduction under this section or  
19 section 42-5062, but the gross proceeds of sales or gross income to be  
20 deducted shall not exceed the consideration paid to the person conducting the  
21 activity.

22          (c) Business activity that is arranged by a person who is subject to  
23 tax under this section and that is taxable to another person under this  
24 section who conducts the activity, but the gross proceeds of sales or gross  
25 income to be deducted shall not exceed the consideration paid to the person  
26 conducting the activity.

27          C. For THE purposes of subsection B of this section:

28          1. "Health or fitness establishment" means a facility whose primary  
29 purpose is to provide facilities, equipment, instruction or education to  
30 promote the health and fitness of its members and at least eighty per cent of  
31 the monthly gross revenue of the facility is received through accounts of  
32 memberships and accompanied guest use fees which provide for the right to use  
33 the facility, or any portion of the facility, under the terms of the  
34 membership agreement for participatory purposes for twenty-eight days or  
35 more.

36          2. "Private recreational establishment" means a facility whose primary  
37 purpose is to provide recreational facilities, such as tennis, golf and  
38 swimming, for its members and where at least eighty per cent of the monthly  
39 gross revenue of the facility is received through accounts of memberships and  
40 accompanied guest use fees which provide for the right to use the facility,  
41 or any portion of the facility, for participatory purposes for twenty-eight  
42 days or more.





1 E. The aggregate amount of the refund under this section shall not  
2 exceed one hundred thousand dollars for all taxable periods open under  
3 sections 42-1104 and 42-1106, Arizona Revised Statutes, and this section. If  
4 the aggregate amount of claims under this section that are ultimately  
5 determined to be correct exceeds one hundred thousand dollars, the department  
6 shall reduce each claim proportionately so that the total refund amount  
7 equals one hundred thousand dollars.

8 F. Interest shall not be allowed or compounded on any refundable  
9 amount if paid before July 1, 2006, but if the amount cannot be determined or  
10 paid until after June 30, 2006, interest accrues thereafter under section  
11 42-1123, Arizona Revised Statutes.

12 G. If any part of this section is finally adjudicated to be invalid,  
13 the entire section is void. The provisions of this section are intended to  
14 be nonseverable.

15 Sec. 8. Application of amendments

16 The statutory amendments enacted by this act shall not be considered in  
17 the construction or interpretation of the statutory language as it exists  
18 without these amendments.

APPROVED BY THE GOVERNOR APRIL 11, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2005.

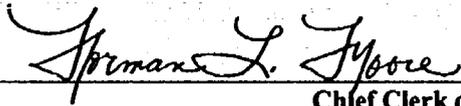
Passed the House April 4, 2005

by the following vote: 51 Ayes,

5 Nays, 4 Not Voting



Speaker of the House

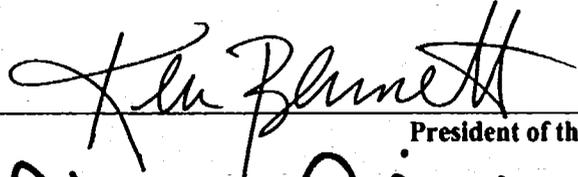


Chief Clerk of the House

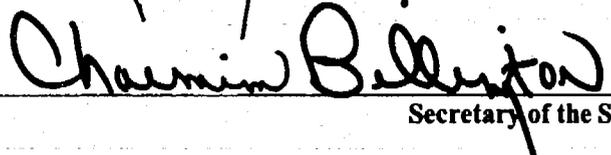
Passed the Senate March 8, 2005

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting



President of the Senate



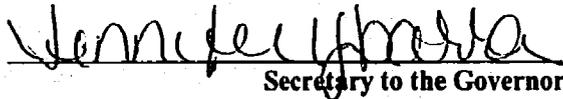
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5th day of April, 2005

at 2:15 o'clock P. M.

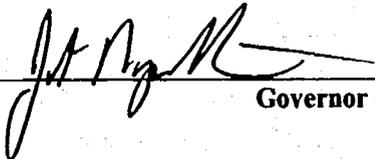


Secretary to the Governor

Approved this 11 day of

April, 2005,

at 10<sup>10</sup> o'clock A. M.



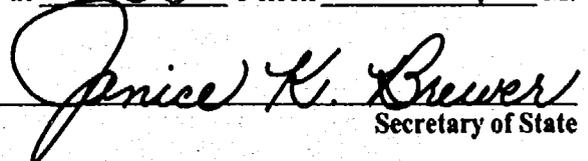
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 11 day of April, 2005

at 1:35 o'clock P. M.



Secretary of State

S.B. 1439