

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:35am on Tuesday, January 27, 2015, 346-S of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Legislative Research Department
Robert Allison-Gallimore, Legislative Research Department
Natalie Nelson, Legislative Research Department
Suzanne Nelson, Kansas Legislative Committee Assistant
Katherine Goyette, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes

Conferees appearing before the Committee:

Adrian Serene, KS Assistant Attorney General;
Kathy Taylor, Kansas Bankers Association;
Luke Bell, Kansas Association of Realtors;
Mike O'Neal, The Kansas Chamber;
Haley DaVee, Kansas Credit Union Association;
Tawnya Johnson, Kansas Judicial Council Staff Attorney;

Others in attendance:

[See Attached List](#)

Bill introductions

The meeting was called to order at 10:35am. Chair King asked for members or guests with bill introductions.

Senator Lynn introduced a measure concerning the Kansas Open Records Act.

Senator Haley introduced a bill that would require a "Hard 50" enhanced sentence for illegal discharge of a weapon into an occupied house or an occupied vehicle.

Senator Haley also introduced a bill regarding racial profiling data collection.

There being no further bill requests or introductions, the Chair opened the hearing on **SB38**.

Hearing on: SB38 — Bad faith assertions of patent infringement.

Jason Thompson presented a brief overview of the bill. He also mentioned there is additional information on this bill contained in the *Report of the Special Committee on Judiciary to the 2015 Kansas Legislature*, which was distributed, but not specifically addressed.

Adrian Serene presented testimony in support on behalf of Attorney General Derek Schmidt. He stated

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that their office is not aware that "patent trolling" has become a problem in Kansas. However, other states have brought enforcement actions and it is likely just a matter of time before this sort of fraud reaches our state. ([Attachment 1](#))

Kathy Taylor presented proponent testimony. This bill was fashioned after successful legislation in Vermont and would help a Kansas business that is the subject of a demand letter claiming a patent infringement (referred to as a "target") determine the legitimacy of the claim prior to engaging in a patent infringement lawsuit. ([Attachment 2](#))

Luke Bell gave testimony in support of **SB38** stating that the bill will provide small business owners with reasonable protections against abusive threats of litigation and exorbitant requests for licensing fees. Kansas REALTORS strongly believe that this bill offers a good balance between protecting legitimate businesses' and inventors' patent rights but also protects small business owners from frivolous litigation and exorbitant patent licensing expenses. ([Attachment 3](#))

Mike O'Neal also offered testimony supporting the legislation. Mr. O'Neal suggested that the most common approach to dealing with the practice of bad faith patent infringement demand letters comes from Illinois, rather than Vermont. He called attention to additional information from The Coalition for 21st Century Patent Reform, the Intellectual Property Owners Association, and the Illinois General Assembly contained in his testimony and asked that the Committee review its contents and consider it in making a decision on this important legislation for Kansans. ([Attachment 4](#))

Haley DaVee presented support for **SB38**. She stated that there is growing concern in the credit union industry because demand letters received by credit unions have increased in recent years. It is especially problematic for credit unions and smaller financial institutions, who buy a product or service and then are served for using it, despite the fact that they did not create or manufacture it. In many demand letters, the target is typically the technology that makes financial services accessible to consumers, such as ATMs, online and mobile banking, remote check capture and check processing. ([Attachment 5](#))

Proponent written-only testimony was submitted by:

Leslie Kaufman, Kansas Cooperative Council ([Attachment 6](#))

Shawn Mitchell, Community Bankers Association ([Attachment 7](#))

Neutral written-only testimony was submitted by:

Matt Casey, Kansas Board of Regents ([Attachment 8](#))

Seeing that no opponent testimony or oral neutral testimony was submitted, the Chair closed the hearing on **SB38**.

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Hearing on: SB22 — Municipal court; notice of expungement of certain records and notice of disposition of appeals.

The Chair opened the hearing on **SB22**.

Jason Thompson gave a brief explanation of this bill, noting the bill also includes some technical amendments including one to reflect the correct fee for an expungement application.

Tawnya Johnson presented testimony in support of **SB22**, which is intended to improve the communication between District and Municipal Courts about record expungements so that arrest records, diversions and criminal convictions that are expunged will be recorded in both places and the records from both courts pulled. ([Attachment 9](#))

The Chair called the Committee's attention to the proponent written-only testimony submitted:

Jennifer Roth, Legislative Committee Chair, Kansas Association of Criminal Defense Lawyers ([Attachment 10](#))

There being neither opponent nor neutral testimony, and no questions posed, Chair King closed the hearing on **SB22**.

Possible action on bills previously heard

The Chair turned the committee's attention to action on **SB16**. Jason Thompson presented a brief reminder on the provisions of the bill.

Questions from the members were answered by the Chair and Jason Thompson regarding the circumstances on which the attorney fees would be awarded and whether there were other statutes where attorney fees for similar types of losses might be recouped, particularly under consumer protection statutes and insurance fraud statutes. The Chair noted that some amendments are expected that might clarify the members' opinion about the proposed legislation.

Jason Thompson distributed copies and explained the provisions of the Knox balloon amendment to **SB16**. ([Attachment 11](#)) He also distributed copies of the King balloon amendment, however it was not specifically addressed at this time. ([Attachment 12](#)) The Chair wanted members to be aware of both amendments, but said the King balloon would not be offered until the Knox balloon was fully vetted and voted upon.

*Senator Knox moved, seconded by Senator Pettey, that **SB16** be amended as proposed in the Knox balloon.*

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Discussion on the motion followed. The members questioned the exact differences the amendment would make to the current law. Many expressed concerns whether the provisions would pertain to any type or kind of insurance, including liability. Another wanted to know what would happen if both amendments were passed. Repealing K.S.A. 40-908 was seen as another alternative. At the end of discussion, the Committee decided to put the issue on hold to have more time to consider the ramifications of various alternative amendments. No vote was taken at this time.

The Chair stated that the Committee would continue action on **SB16** again on Thursday, January 29, 2015, and would begin with the Knox balloon amendment.

The meeting adjourned at 11:55am. The next meeting will be Wednesday, January 28, 2015.