

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at _____
Chairperson

10:00 a.m./~~p.m.~~ on February 24, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

- Mike Heim, Legislative Research Department
- Jerry Donaldson, Legislative Research Department
- Gordon Self, Revisor of Statutes
- Jane Tharp, Committee Secretary

Conferees appearing before the committee: None

Senate Bill 50 - Establishing the Kansas sentencing commission.

Following committee discussion, Senator Gaines moved to amend the bill in line 33 to change 13 to 15, in Section 2 by adding attorney general and attorney general designee, in line 45 change three to four. Senator Rock seconded the motion. Following committee discussion, the motion carried.

Senator Gaines moved to amend the bill to provide of the four member general public at least one should be a representative of a minority group. Following committee discussion, the motion carried.

Senator Bond made a conceptual motion to provide that the commission report back the advisability of the parole board and of good-time credits. Senator Gaines seconded the motion. The motion carried.

Senator Martin moved to amend the bill by adding any federal judge's order pertaining to state correctional facilities be taken into consideration. Senator D. Kerr seconded the motion. Following committee discussion, Senator Martin withdrew his motion.

Senator Gaines moved to amend the bill in line 26 by deleting the word fixed and adding presumed. Senator Parrish seconded the motion. The motion carried.

Senator Oleen moved to amend the bill in line 82 by deleting the words "on the" and adding "no later than". Senator Parrish seconded the motion. Following committee discussion, the motion failed.

It was the consensus of the committee to ask the majority floor leader to advance the bill to the top of the calendar to move the bill along quickly.

Senator Bond moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment I).

Copy of a letter concerning Senate Bill 116 is attached (See Attachment II).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-24-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Ruth Weimer	Topeka	L. W. V.
Dicky Joylon	Topeka	Life at Best
Jan Brass	Topeka	Life at its Best
Paul Shelby	Topeka	OJA
Jim Clark	Topeka	KC DAA
Bobby Shatley	Topeka	Anten
John McManis	Topeka	Observer
Tom Sloan	Topeka	Doc
Paula Sue Heathouse	Lawrence	Anten
M. Hawn	Topeka	dog-Journal

Attachment I
Senate Judiciary
2-24-89



UNITED TELECOMMUNICATIONS, INC.

BOX 11315/KANSAS CITY, MISSOURI 64112(913) 676-3096

TERRY L. HURLEY
SENIOR ATTORNEY

February 22, 1989

HAND DELIVERED

The Honorable Wint Winter, Jr.
Chairman - Senate Judiciary Committee
State Capitol Building
Room 120 - S
Topeka, KS 66612

Re: Senate Bill No. 116

Dear Senator Winter:

Please allow me to again express my appreciation for permitting me to speak last week on behalf of United Telecom in support of the above-referenced legislation.

Several questions were raised by you and other members of the Committee concerning the proposed legislation. I will attempt to provide answers to those questions which were not fully answered at the hearing. The answers are set forth below in a question and answer format for your convenience.

1. Question: Which states have adopted both an Indiana-type control share acquisition statute and a Delaware-type business combination moratorium statute?

Answer: Our research indicates that the states having both types of laws on their books are as follows:

Arizona
Idaho
Indiana
Maine
Missouri

Nebraska
South Carolina
Tennessee
Wisconsin

Attachment II

*SGC
2-24-89*

2. **Question:** Please identify the judicial decisions which have dealt with the constitutionality of the Delaware business combination moratorium law (Section 203 of the Delaware General Corporation Code).

Answer: The decisions are as follows:

- (a) BNS Inc. v. Koppers Company, 683 F.Supp. 458 (D. Del. 1988).
- (b) RP Acquisition Corp. v. Staley Continental, 686 F.Supp. 476 (D. Del. 1988).
- (c) City Capital Associates v. Interco, Inc., 696 F.Supp. 1551 (D. Del. 1988).

Each of the above decisions was rendered in response to requests for preliminary relief. The decisions upheld, on a preliminary basis, the constitutionality of the Delaware law.

3. **Question:** Are nexus requirements in addition to incorporation within the state necessary to ensure the constitutionality of the proposed legislation?

Answer: We think it is unlikely that the legislation would be struck down for failing to include additional nexus requirements, such as the presence of assets or shareholders within the state. As indicated above, the Delaware law already has been judicially tested on several occasions and preliminarily has been held constitutional. Additionally, New York's business combination moratorium statute has been upheld in a most recent decision captioned Vernitron Corp. v. Kollmorgen Corp., 89 Civ. 0241 (S.D.N.Y. Feb. 9, 1989). In Vernitron, the court ruled that the New York law does not place an impermissible burden on interstate commerce, citing CTS Corp. v. Dynamics Corp. of America, 107 S.Ct. 1637 (1987) (Upholding Indiana's control share acquisition law.).

In our view, the proposed legislation does not offend the Commerce Clause of the United States Constitution because (i) the statute does not discriminate between tender offers for foreign corporations and tender offers for domestic corporations, (ii) the proposed law would not subject corporations to inconsistent state regulation, since

it is applicable only to domestic corporations, and (iii) the burden imposed by the law on interstate commerce is not excessive, in view of the Supreme Court's recent decision in CTS.

4. **Question:** Why does Senate Bill No. 116 provide for a three-year "cooling-off" period during which business combinations are restricted?

Answer: The proposed law provides for the same cooling-off period as the Delaware law. A review of the transcript of hearings before the Joint House-Senate Judiciary Committee of the Delaware Legislature does not reveal a specific rationale for the three-year period. The three-year period appears to be a compromise between the need to protect shareholders for a period of time sufficient to discourage abusive two-tier takeovers and the need to allow targeted corporations to get on with their business as expeditiously as possible.

To place this in perspective, we have compiled the following list of states which have adopted a Delaware-type law, indicating the length of the cooling-off period for each state:

Arizona (3 yrs.)	Missouri (5 yrs.)
Connecticut (5 yrs.)	Nebraska (5 yrs.)
Delaware (3 yrs.)	New Jersey (5 yrs.)
Georgia (5 yrs.)	New York (5 yrs.)
Idaho (5 yrs.)	South Carolina (2 yrs.)
Indiana (3 yrs.)	Tennessee (5 yrs.)
Kentucky (5 yrs.)	Washington (5 yrs.)
Minnesota (5 yrs.)	Wisconsin (3 yrs.)

We believe the three-year cooling-off period contained in the Delaware law represents a fair compromise between competing policy considerations.

5. **Question:** Why is the legislation drafted with an opt-out rather than an opt-in provision?

Answer: The proposed law provides for an opt-out which can be accomplished by a corporation's board of directors during the first 90 days after the law goes into effect. The legislation also provides for a shareholder opt-out at any time, subject to the 12-month delay discussed below.

In our view, the statute adopts the opt-out approach for two basic reasons. First, the vast majority of corporation statutes are mandatorily applicable to, or provide for an opt-out by, subject corporations. This approach encourages uniform application of corporation laws to the broadest possible spectrum of corporations. Secondly, since this statute is aimed at protecting the interests of minority and long-term shareholders, there is some doubt that takeover specialists, arbitrageurs and institutional investors, whose interests often are short-term, would vote in favor of opting in under the proposed law.

This was a predominant issue during the hearings before the Delaware Legislature. After extensive testimony from both proponents and opponents of the opt-out approach, the legislature adopted the opt-out provision.

6. **Question:** Why does the proposed law provide for a 12-month delay in the effectiveness of a shareholder opt-out?

Answer: The 12-month delay is identical to the delay imposed by the Delaware law. The waiting period is necessary to prevent a controlling shareholder from circumventing the law by forcing an amendment to the target corporation's articles of incorporation upon minority shareholders. Presumably, the amendment would be accomplished through a proxy fight conducted by the controlling shareholder. Normally, such an amendment would require only the approval of a simple majority of those outstanding shares entitled to vote on the matter. If the effectiveness of such an amendment were immediate, the controlling shareholder could negate the application of the law with a simple majority of the target's stock, thereby avoiding the requirement under the proposed law that restricted business combinations must be approved by two-thirds of the target corporation's disinterested shares.

7. **Question:** Is Senate Bill No. 116 identical to the Delaware business combination moratorium law?

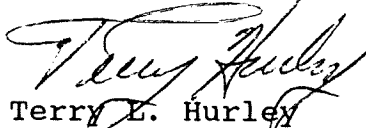
Answer: A comparison of the legislation currently under consideration in Kansas and Section 203 of the Delaware General Corporation Code indicates no substantive differences between the laws. It is our

understanding that the bill was intentionally drafted to be virtually identical to the Delaware law.

I hope that the answers provided above adequately address the questions raised by the Committee. In the event you would desire further clarification of these issues or if the Committee wishes to raise additional questions, I would be more than happy to provide my assistance.

Once again, the opportunity to present United Telecom's views to the Committee is appreciated.

Very truly yours,



Terry L. Hurley

TLH:lw

cc: J. F. Dodd, Esq.
D. A. Jensen, Esq.
Mr. J. M. Russell
Mr. C. J. Schwartz