

Approved: 4-7-95  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 21, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Chair called the meeting to order at 10:05 a.m. and referred to HB 2177.

### HB 2177--Venue for actions against corporations

HB 2177 was discussed briefly with reference made to a similar bill, SB 72. The Chair noted that the Committee by consensus agreed to Section 1, contained in the Senate bill. Senator Parkinson discussed the House amendments, Section 2 and Section 3.

Motion was made by Senator Parkinson, second by Senator Vancrum to amend by deleting Section 2 and Section 3, and recommend the bill favorably for passage. Motion carried.

### HB 2445--Authorized interception of wire communications; cordless phones are now covered by the warrant requirements for wiretap

The Chair explained that HB 2445 would bring Kansas statutes in line with federal requirements. There were amendments in the House regarding the possession of firearms. After reviewing the amendments, the Revisor advised that there are no substantive changes. The amendments deal with persons convicted of a non-person felony being prohibited from possessing a gun for ten years after conviction if a gun was used in the commission of the felony. Discussion followed concerning the firearms amendment, and the inclusion of non-residents to the firearms prohibition.

Motion made by Senator Parkinson, second by Senator Harris to recommend HB 2445 favorably for passage.

Substitute motion made by Senator Oleen, second by Senator Bond to strike Section 2, and pass the bill favorably as amended. Motion failed.

Motion made by Senator Parkinson, second by Senator Harris to recommend HB 2445 favorably for passage. Motion carried.

### HB 2448--In property damage cases in auto accidents, attorney fee recovered only if previous demand for payment has been made.

The Chair noted issues on line 23, whether to take out plaintiff and replace it with *prevailing party*, and line 27, use "at the party's last known address," Senator Parkinson offered a conceptual amendment with language stating whoever wins as long as they have given the other side 30 days to pay a claim, they get their attorney's fees. Senator Parkinson also suggested changing the language from *adverse party* to *prevailing party* on line 27. Senator Parkinson explained the need for the bill by stating "the intent (of this bill) was to

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provide a way for people to get their property damages, and if they could not get them settled fairly, they could go to court and get their attorney's fees. If they do not get their attorney fees they are not made whole." Senator Parkinson explained that some attorneys have abused this statute and have filed claims before giving insurance companies notice and an opportunity to pay the money, in order to insure receipt of attorney's fees.

Motion made by Senator Parkinson, second by Senator Bond to amend conceptually the part about notice at last known address, the verbiage about the defendant recovering attorney's fees if they prevail after they have given notice, and to recommend HB 2448 favorably for passage as amended. Motion carried.

**SB 110--Enacting the brokerage relationships in real estate transactions act.**

The Chair explained that **SB 110** is a rather extensive piece of legislation addressing issues concerning real estate agents. The bill is complicated and codifies a good deal of law of agency. The Chair referred to the subcommittee report from Senator Harris.

Senator Harris explained that the bill is a comprehensive codification of real estate proceedings, liabilities, relationships of the parties in real estate transactions, etc. Senator Harris referred to a balloon of the bill as recommended by the subcommittee. Senator Harris's subcommittee recommends favorable passage as amended. Senator Harris stated that there were no opponents appearing in the subcommittee hearing. In addition to the balloon, there is also a memorandum attached to it from attorney, Mark Buck, and that memorandum has to do with citation to the cases in which common law principles were lifted and placed into **SB 110**. Senator Harris continued, that the research by Mr. Buck satisfies the concern that this bills actually codifies case law. There was a section in the bill that says that it does supplant existing common law, Section 12. At the request of the Chair of Judiciary, and the subcommittee, Section 12 was deleted. Senator Harris related the purposes of the different sections and noted a paragraph he considers critical in Section 6, last paragraph which lays out that the seller is not liable for punitive or extemporary damages for the licensee's failure to preform any of the duties delineated in that section, unless the seller engaged in some kind of fraudulent or malicious conduct. This is contrary to case law which states that sellers can be held with punitive damages for acts of their agents. In describing Section 9 regarding dual agency, Senator Martin stated that this section sets some guidelines.

Discussion followed regarding aspects of dual agency, issues of confidentially, and the development of rules and regulations involved in enacting this bill.

Motion by Senator Harris, second by Senator Martin to recommend SB 110 favorably for passage with amend with provision in balloon, subject to technical amendments made by the Revisor. Motion carried.

Senator Vancrum asked the Chair about **SB 295**. Discussion followed. Consensus of the Committee was to request a post-audit and reconsider next year.

The Chair announced that there would be one meeting next week to confirm the Governor's appointee for the Parole Board.

Meeting adjourned at 11:10 a.m.

The next meeting is scheduled for March 27, 1995.

