

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:40am on Thursday, March 03, 2016, 346-S of the Capitol.

All members were present except:

Senator Julia Lynn – Excused  
Senator Carolyn McGinn – Excused

Committee staff present:

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

Conferees appearing before the Committee:

Mark B. Hutton, Hutton & Hutton Law Firm LLC, Wichita, KS;  
Richard James, DeVaughn James Injury Lawyers, Wichita, KS;  
Senator Mitch Holmes, 33rd District, St. John, KS;  
Nathan Leadstrom, on behalf of the Kansas Association of Defense Counsel;  
Pedro Irigonegaray, Irigonegaray & Associates, Topeka, KS;  
Allen Rostron, Associate Dean and William R. Jacques Constitutional Law Scholar, University of Missouri - Kansas City School of Law on behalf of the Kansas District Judges Association;  
Paul Burmaster, Attorney, Paul W. Burmaster P.A., Overland Park, KS;  
Doug Wells, Attorney, Douglas E. Wells Law Firm, Topeka, KS;

Others in attendance:

[See Attached List](#)

### **Hearing on: SB467 — Prohibiting certain advertising by an attorney who is not regularly admitted to practice law in Kansas.**

Chair King called the meeting to order. He made announcements regarding the committee's schedule for the next couple of weeks. He then opened the hearing on **SB467**.

Jason Thompson gave an overview of the bill explaining that it might look familiar because the committee worked a similar bill last year in **SB229**, but it did not get out of committee.

Mark Hutton presented proponent testimony. He noted that nothing in Kansas law prohibits out-of-state lawyers and advertising groups from soliciting Kansas clients. These advertisements lead to an out-of-state lawyer, who is not licensed in Kansas, providing legal advice to a Kansas consumer regarding a

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potential claim arising in Kansas. Mr. Hutton referenced an example of such a case that ended up in his law office (see Attachment 1 below). Mr. Hutton urged the committee to pass this bill. He stood for questions. There were none. ([Attachment 1](#))

Richard James presented opponent testimony. He pointed to three main issues with this bill: 1) the bill is unconstitutional as written and violates holdings of the U.S. Supreme Court; 2) the jurisdiction for regulation of the practice of law belongs solely to the Supreme Court; and 3) the bill's provisions pose an infringement on a free-market economy as previously addressed by the U.S. Supreme Court. Mr. James stood for and answered questions from Senators Knox and Pettey. ([Attachment 2](#))

There being no further questions, and no other oral or written proponent, opponent, or neutral testimony, the Chair closed the hearing on **SB467**.

Chair King turned the committee's attention to and opened the hearing on **HB2062**.

**Hearing on: HB2062 — Substitute for HB 2062 by Committee on Judiciary – Uniform commercial code (UCC) updates; exclusion of consumer transactions governed by federal law; other technical corrections.**

Chair King explained to the committee that this is an identical bill to Senate Sub HB2124 that failed to emerge from conference committee last year. Jason Thompson gave an overview of the bill and told the committee they could go back to last year's records and look at the testimony presented. He noted that the bill was passed 39-0 in the Senate. He also related that Kansas is one of six states that has not adopted these recommended federal changes to the Uniform Commercial Code (UCC). He stood for questions. There were none.

There being no other oral or written proponent, opponent, or neutral testimony submitted, Chair King closed the hearing on **HB2062**.

The Chair turned the committee's attention to **SB439** and opened the hearing.

**Hearing on: SB439 — Grounds for impeachment of justices of the supreme court and certain judges of the district court.**

Jason Thompson gave an overview of the bill and distributed a Memorandum regarding the sections of the State of Kansas Constitution that are referenced in **SB439**. ([Attachment 3](#)) Mr. Thompson answered questions from Senators Haley and Knox.

Senator Holmes presented testimony in favor of the bill. The Senator gave several examples of instances wherein he believes a court exhibited judicial misbehavior. He related that the constitution does not belong to the court, but rather to the people. He further related that the courts are not authorized to amend, insert, delete, or otherwise change the meaning of our constitution -- they are intended to administer justice under the rule of law. Senator Holmes also urged the committee to read

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the written-only proponent testimony of Steven Fitschen. ([Attachment 4](#)) Senator Holmes stood for and answered questions from Senator Haley.

The Chair called attention to the proponent written-only testimony submitted by:

Senator Greg Smith, 21st District, Overland Park, Kansas ([Attachment 5](#))

Steven W. Fitschen, President, The National Legal Foundation, Virginia Beach, VA ([Attachment 6](#))

Nathan Leadstrom presented opponent testimony. Mr. Leadstrom related several reasons for urging the committee to reject **SB439**, including:

- The House has the sole power to impeach;
- **SB439** usurps the Supreme Court's judicial power to discipline or remove lower court judges;
- The bill expands the basis for impeachment beyond Constitutional grounds and violates the separation of powers; and
- Enacting the provisions of **SB439** would risk redefining impeachment as "anything we want it to be." ([Attachment 7](#))

Pedro Irigonegaray testified in opposition to the bill. He related that his disagreement is based on significant and troubling constitutional and public policy problems. He spoke about many of the same objections as the prior conferee, Mr. Leadstrom. He noted that the current system is not broken, but he posed that it will cost the State of Kansas large amounts of time and money defending the constitutionality of the law, which will be challenged, and will cause a huge waste of taxpayers' money. ([Attachment 8](#))

Allen Rostron also spoke opposing the bill, restating many of the objections of the prior opponent conferees. He also noted that at one time the bases for impeachment in the Kansas Constitution were broader. He related that until 1974, the Kansas Constitution provided state officials could be impeached "for any misdemeanor in office." However, in 1974, Kansas amended its Constitution and replaced the broader language with the current provision mirroring the U.S. Constitution allowing impeachment for treason, bribery, and other high crimes and misdemeanors. ([Attachment 9](#))

Vice-Chair Smith asked if there were questions for the opponents. Messrs. Leadstrom, Irigonegaray, and Rostron answered questions from Senators Knox, Pettey, Bruce, Haley, and Smith.

Vice-Chair Smith called attention to the written-only opponent testimony submitted by:

- Callie Denton, Executive Director, Kansas Association for Justice; ([Attachment 10](#)) and

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- Joe Molina, Attorney, on behalf of the Kansas Bar Association. ([Attachment 11](#))

There being no other questions, and no additional oral or written proponent, opponent, or neutral testimony, Vice-Chair Smith closed the hearing on **SB439**.

The Vice-Chair turned the committee's attention to **HB2289** and opened the hearing.

**Hearing on: HB2289 — Substitute for HB 2289 by Committee on Judiciary - DUI test refusal or failure; administrative hearing procedure.**

Jason Thompson gave an overview of the bill and stood for questions. There were none.

Chair King, announced because of time constraints, he was going to leave the hearing on **HB2289** open and continue it on Tuesday, March 8, 2016 at 10:30 am. Conferees who were from out of town or whose schedules would not permit them to be present next week presented their testimony as follows:

Paul Burmaster testified in favor of **HB2289**. He related that this bill seeks to correct errors in fundamental fairness in administrative drivers license hearings in Kansas. He noted these hearings require drivers to pay for their right to a hearing, but are denied the police reports or the ability to argue if the stop was unlawful. Mr. Burmaster contended that this problem should be corrected so that drivers can see the reports and the evidence against them, and so hearing officers can make informed rulings. ([Attachment 12](#))

Doug Wells gave supporting testimony surrounding these main points: 1) before a driver's license can be suspended or restricted, the vehicle stop should be legal; and 2) discovery of law enforcement reports is fundamental. Mr. Wells related that the requested changes are modest, based upon concepts of fairness, and are necessary so that an individual receives a proper hearing before sanctioning of his/her fundamental ability to drive. ([Attachment 13](#))

The Chair asked for questions for Mr. Burmaster or Mr. Wells. There were none.

Chair King reiterated that this hearing will remain open, and all other conferees and written-only testimony for **HB2289** will be heard first on the agenda on Tuesday, March 8, 2016.

**Possible action on bills previously heard**

No action was taken on any bills previously heard today.

There being no other business for today, the meeting adjourned at 12:25 pm. The next scheduled meeting is Tuesday, March 8, 2016 at 10:30 am.