

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on March 20, 2007, in Room 123-S of the Capitol.

All members were present except:

Derek Schmidt arrived, 9:43 A.M.

Dwayne Umbarger- excused

David Haley arrived, 9:50 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department

Bruce Kinzie, Office of Revisor of Statutes

Nobuko Folmsbee, Office of Revisor of Statutes

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Pete Bodyk, Chief, Bureau of Traffic Safety, Kansas Department of Transportation

Bill Miller, American Subcontractors Association

SueAnn Schultz, Government Affairs Chair, Kansas Association of Insurance Agents

Dan Morgan, Builder's Association, Kansas City Chapter, Associated General Contractors

Dan Haake, Owner, Haake Foundations, Inc.

Wyatt Hoch, Coalition to Preserve Freedom of Contract

Shannon Ratliff, Coalition to Preserve Freedom of Contract

Stephen Ware, Professor of Law, University of Kansas, Coalition to Preserve Freedom of Contract

Others attending:

See attached list.

The Chairman opened the hearing on **SB 376--Driving under the influence; habitual violator; administrative hearings; motorized bikes; ignition interlock; impoundment.**

Senator Phil Journey spoke in support, providing information on the development and purpose of the bill. Senator Journey indicated this bill will bring Kansas into compliance with Title 23 USC Section 164 regarding minimum penalties for repeat DUI offenders. This bill would also allow operation of a moped in various situations and the computation of time for requesting hearings, appeals and other legal actions (Attachment 1).

Pete Bodyk appeared in support, indicating Kansas Department of Transportation discovered two provisions in current Kansas statutes that place the State out of compliance with Title 23 USC 164. Enactment of this bill is critical to avoid federal penalties and avert a \$7.6 million transfer of federal funds from construction projects to safety programs and hazard elimination projects (Attachment 2).

There being no further conferees, the hearing on **SB 376** was closed.

The hearing on **SB 379--Contracts; indemnification clauses and additional insured requirements in construction contracts void** was opened.

Bill Miller spoke in support, stating the current practice of requiring the sub-contractor to name the owner, general contractor, etc. as "additional insured" on a sub-contractor's insurance policy effectively transfers the risk to the sub-contractor and his insurance company. The additional insured requirement circumvents Kansas anti-indemnity laws, is unfair and needs to be eliminated. Every business, regardless of size, should purchase the limits of insurance required by law to protect the public and the assets of the business (Attachment 3).

SueAnn Schultz appeared in support, stating it is good public policy to require each party to be responsible for their own negligence and supports the continued use of reciprocal indemnification clauses, where each party protects the other from the results of their own negligence. **SB 379** will prohibit companies from circumventing anti-indemnification laws (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on March 20, 2007, in Room 123-S of the Capitol.

Dan Morgan spoke in favor, indicating the requirement for one party to hold another party harmless from damages caused by that other party's own intentional acts, negligence, or omission is not good public policy (Attachment 5).

Dan Haake spoke as a proponent by sharing his experience involving a fatality accident. He felt the general contractor was able to shift the risk and responsibility to others and eliminates the incentive to provide a safe work environment (Attachment 6).

Ken Daniel spoke in support. He indicated legislation passed in 2004 prohibited the use of indemnity clauses in contracts but large businesses circumvent that law by switching the insurance requirements in contracts. This is an unfair practice and passage of **SB 379** will stop this abusive practice (Attachment 7).

Wyatt Hoch appeared in opposition indicating this bill would restrict the ability of a property owner to contract to become an "additional insured" party under the commercial general liability insurance policy maintained by its construction contractor. The government should not take sides in a non-consumer business transaction (Attachment 8).

Shannon Ratliff spoke in opposition (Failed to provide copy of remarks).

Stephen Ware appeared as an opponent, stating that businesses adjust the prices they charge to reflect the risks they carry and competition forces such adjustments in price. (Attachment 9)

Written testimony on **SB 379** was submitted by:

Ken Keller, Controller, Western Extralite Company (Attachment 10)

Gus Meyer, Rau Construction (Attachment 11)

Corey Peterson, Associated General Contractors of Kansas (Attachment 12)

Chris Wilson, Executive Director, Kansas Building Industry Association (Attachment 13)

Ed Cross, Executive Vice President, Kansas Independent Oil & Gas Association (Attachment 14)

There being no further conferees, the hearing on **SB 379** was closed.

The Chairman called for final action on **SB 366--Traffic citations; method of giving notice of failure to comply**. Senator Vratil reviewed the bill.

Following discussion, Senator Journey moved, Senator Haley seconded, to amend page 1, line 26, to strike the word "or" and insert the word "and". Motion failed.

Senator Bruce moved, Senator Goodwin seconded, to recommend SB 366 favorably for passage. Motion carried. Senator Journey voted "no" and requested his vote be recorded.

Final action on **HB 2087--Kansas sentencing commission assumes the functions of the state statistical analysis center from the Kansas criminal justice coordinating council**. Chairman Vratil reviewed the bill.

Senator Goodwin moved, Senator Schmidt seconded, to recommend HB 2087 favorably for passage. Motion carried.

The Chairman called for final action on **HB 2283--Perfection of security interests on certificates of title**. Chairman Vratil reviewed the bill and distributed a balloon amendment proposed by the Kansas Bankers Association (Attachment 15).

Senator Bruce moved, Senator Donovan seconded, to adopt the proposed amendment. Motion carried.

Senator Schmidt moved, Senator Donovan seconded, to recommend HB 2283, as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:29 A.M. The next scheduled meeting is March 21, 2007.