

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT, AND CRIMINAL JUSTICE
STANDING COMMITTEE
FRIDAY, JANUARY 27, 2006
Room W130, West Office Building, State Capitol Complex**

Members Present: Sen. Gregory S. Bell, Vice-Chair
Sen. Patrice M. Arent
Sen. Mike Dmitrich
Sen. Lyle W. Hillyard
Sen. Mark B. Madsen
Sen. L. Alma Mansell
Sen. David L. Thomas

Members Excused: Sen. Chris Buttars, Chair

Staff Present: Jerry Howe, Policy Analyst
Norda Shepard, Committee Secretary

Public Speakers Present: Edward L. Carter, J.D.
Paul Boyden, Utah Association of Prosecutors
Paul Newton, Utah Land Title Association
Chris Purcell, State Farm Insurance
Edward Havas, Utah Trial Lawyers Association
Reed Richards, Chairman, State Council on Victims of Crime
Rick Schwermer, Administrative Office of the Courts
Stewart Ralphs, Utah Domestic Violence Council
Tom Vaughn, Office of Research and General Counsel

A list of visitors and a copy of handouts are filed with the committee minutes.

Committee Vice-chair Bell called the meeting to order at 8:21 a.m.

MOTION: Sen. Hillyard moved to approve the minutes of 1-23-06 and 1-24-06. The motion passed unanimously with Sens. Arent and Mansell absent for the vote.

1. S.B. 122 Repeal of Libel Provisions (Sen. S. McCoy)

Sen. McCoy presented the bill and distributed two handouts, "Utah Criminal Code" and a letter from Edward L. Carter, J.D.

MOTION: Sen. Hillyard moved to delete in title and body S.B. 122 and adopt 1st Sub. S.B. 122, "Repeal of Libel Provisions." (Sen. S. McCoy)

The motion passed unanimously, with Sens. Arent and Mansell absent for the vote.

Mr. Carter and Paul Boyden, Utah Association of Prosecutors, spoke in support.

MOTION: Sen. Hillyard moved adoption of the following amendments to 1st Sub. S.B. 122:

1. *Page 1, Line 10:*

10 provision and to repeal related sections. This bill also repeals {~~criminal defamation~~
~~and~~} the

2. *Page 1, Line 17:*

17 {→ ~~repeals the Criminal Code offense of criminal defamation;~~}

3. *Page 2, Line 27:*

27 {~~76-9-404, as enacted by Chapter 196, Laws of Utah 1973~~}

4. *Page 2, Line 37:*

37 {~~Section 76-9-404, Criminal defamation.~~}

The motion passed unanimously with Sens. Arent and Dmitrich voting in opposition.

MOTION: Sen. Hillyard moved to pass 1st Sub. S.B. 122 out of committee with a favorable recommendation as amended. The motion passed unanimously.

2. S.B. 134 Lien Duration of a Foreign Judgment (Sen. T. Hatch)

Sen. Madsen presented the bill. Paul Newton, Utah Land Title Association, spoke in support.

MOTION: Sen. Thomas moved to pass S.B. 134 out of committee with a favorable recommendation. The motion passed unanimously.

Sen. Mansell assumed the chair.

3. S.B. 148 Punitive Damages - Discovery of Wealth (Sen. G. Bell)

Sen. Bell presented the bill.

MOTION: Sen. Bell moved adoption of the following amendment to amend S.B. 148:

1. Page 2, Lines 43 through 47:

- 43 (2) {~~(a)~~} Evidence of a party's wealth or financial condition shall be admissible
only after
44 a finding of liability for punitive damages has been made.
45 {~~(b)~~} (a) Discovery concerning a party's wealth or financial condition may
only be allowed
46 after the party seeking punitive damages has established a prima facie case that an award
of
47 punitive damages is reasonably {~~probable~~} possible against the party about whom
discovery is sought.

(b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502.

The motion passed unanimously.

Chris Purcell, State Farm Insurance, spoke in support. Edward Havas, Utah Trial Lawyers Association spoke in opposition.

MOTION: Sen. Hillyard moved to reinstate "probable" to Line 27 of the bill.

After committee discussion Sen. Hillyard made the following substitute motion.

SUBSTITUTE MOTION: Sen. Hillyard moved to adopt the following amendment to S.B. 148:

- 47 punitive damages is reasonably {~~probable~~} = {~~possible~~} likely against the
party about whom discovery is sought.

(b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502.

The motion passed unanimously.

MOTION: Sen. Hillyard moved to pass S.B. 148 out of committee with a favorable recommendation as amended. The motion passed unanimously.

4. S.B. 150 Expungement Amendments (Sen. G. Bell)

MOTION: Sen. Bell moved to delete in title and body S.B. 150 and adopt 1st Sub. 150 Restitution Amendments. The motion passed unanimously.

Sen. Bell presented the bill with the help of Reed Richards, State Council on Victims of Crime.

MOTION: Sen. Arent moved to adopt the following amendment to Sub. S.B. 150:

1. *Page 2, Lines 46 through 50:*

46 (4) This section may not be construed to preclude any person from obtaining or being
47 granted an expungement of his record as provided by law.

48 (5) A judgment for a conviction under ~~{ Subsection (2)(b) }~~ this section
may not be entered if there
49 remains any unpaid balance on court ordered restitution for that particular offense entered
50 pursuant to Section 77-38a-302.

2. *Page 3, Line 86 through Page 4, Line 88:*

86 (h) the petitioner has not paid the full amount of court ordered restitution
~~{ ordered by a court }~~ pursuant
87 to Section 77-38a-302, or by the Board of Pardons pursuant to Section 77-27-6 on the
88 conviction for which the person is seeking an expungement.

The motion passed unanimously.

MOTION: Sen. Arent moved to pass 1st Sub. 150 out of committee with a favorable recommendation as amended. The motion passed unanimously.

Sen. Bell resumed the chair.

5. S.B. 159 District Court Judge (Sen. M. Madsen)

Sen. Madsen presented the bill.

MOTION: Sen. Madsen moved to pass S.B. 159 out of committee with a favorable

recommendation. The motion passed unanimously.

6. S.B. 163 Statement Under Penalty of Perjury (Sen. S. McCoy)

Sen. McCoy presented the bill.

MOTION: Sen. Arent moved to adopt the following amendment to S.B. 163:

1. *Page 1, Line 26 through Page 2, Line 28:*

- 26 If the law requires or permits {~~a sworn statement,~~} an affidavit, {~~or~~
similar legal document,}
27 an individual may, with like force and effect, provide an unsworn written document,
subscribed
28 under penalty of perjury and dated, in substantially the following form:

The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Sen. Arent moved to passed S.B. 163 out of committee with a favorable recommendation as amended. The motion passed unanimously with Sen. Hillyard absent for the vote.

7. S.B. 164 Repeal of Ordination by Internet (Sen. G. Davis)

Sen. Davis presented the bill.

MOTION: Sen. Arent moved to pass S.B. 164 out of committee with a favorable recommendation. The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Sen. Dmitrich moved to place S.B. 164 on the Consent Calendar. The motion passed unanimously with Sen. Hillyard absent for the vote.

8. S.B. 171 Judiciary Amendments (Sen. L. Hillyard)

Sen. Arent presented the bill. Rick Schwermer, Administrative Office of the Courts spoke in support.

MOTION: Sen. Thomas moved to pass S.B. 171 out of committee with a favorable recommendation. The motion passed unanimously with Sen. Hillyard absent for the vote.

9. S.B 106 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Sen. L. Hillyard)

Sen. Hillyard presented the bill. Stewart Ralphs, Utah Domestic Violence Council spoke in support. Tom Vaughn, drafting attorney, helped explain the bill.

MOTION: Sen. Hillyard moved to pass S. B. 106 out of committee with a favorable recommendation. The motion passed unanimously with Sen. Dmitrich absent for the vote.

MOTION: Sen. Arent moved to adjourn.

Committee Vice-chair Bell adjourned the meeting at 9:58 a.m.

Minutes recorded by Norda Shepard, Committee Secretary

Sen. Gregory S. Bell, Committee Vice-Chair