

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT AND CRIMINAL JUSTICE
STANDING COMMITTEE
Thursday, February 13, 2003
Room 414, STATE CAPITOL BUILDING**

Members Present: Sen. Gregory Bell, Chair
Sen. Patrice M. Arent
Sen. D. Chris Buttars
Sen. Mike Dmitrich
Sen. James M. Evans
Sen. David L. Gladwell
Sen. Lyle W. Hillyard

Members Excused: Sen. L. Al Mansell

Staff Present: Jerry D. Howe, Policy Analyst
Saundra Maeser, Committee Secretary

Public Speakers Present: Joseph Chesser, Evidence Custodian, Weber County Sheriff's Dept.
Larry Bunkall, Government Relations Director, Parsons Behle & Latimer
David Watkiss, Attorney, Ballard, Spahr, Andrews & Ingersoll
Ron Gordon, Director, Utah Sentencing Commission

Visitor list on file.

Committee Chair Bell called the meeting to order at 4:25 p.m.

MOTION: Sen. Hillyard moved to approve the minutes of the February 11, 2003 meeting.

The motion passed unanimously with Sen. Arent, Sen. Buttars and Sen. Dmitrich absent for the vote.

1. S.B. 202 Peace Officer Amendment (M. Waddoups)

Sen. Michael Waddoups introduced the bill.

MOTION: Sen. Hillyard moved to pass S.B. 202 out with a favorable recommendation.

The motion passed unanimously with Sen. Arent, Sen. Buttars and Sen. Dmitrich absent for the vote.

MOTION: Sen. Hillyard moved to place S.B. 202 on the consent calendar.

The motion passed unanimously with Sen. Arent, Sen. Buttars and Sen. Dmitrich absent for the vote.

Sen. J. Evans assumed the chair from Sen. Bell.

2. **H.B. 104 Disposal of Evidence in Criminal Proceedings** (J.S. Adams)

Sen. Bell introduced the bill in place of Rep. Stuart Adams.

Joseph Chesser, Evidence Custodian, Weber County Sheriff's Department, spoke in support of the bill.

MOTION: Sen. Bell moved to pass H.B. 104 out with a favorable recommendation.

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

Sen. Bell assumed the chair from Sen. Evans.

3. **S.B. 59 Amendments to Unsolicited Commercial and Sexually Explicit Email Act**
(P. Arent)

Sen. Arent introduced the bill.

MOTION: Sen. Hillyard moved to adopt 2nd Substitute S.B. 59 and Amendment 1 as follows:

1. Page 3, Line 64: Delete "means" and insert "includes, but is not limited to, a situation where"

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

Larry Bunkall, Government Relations Director, Parsons, Behle and Latimer, spoke in support of the bill.

MOTION: Sen. Gladwell moved to amend 2nd Sub. S.B. 59 as follows:

1. Pages 4-5, Lines 117-132: Delete lines 117-132 and insert:
"13-36-105. Civil action for violation -- Defense.
(1) Any recipient or email service provider aggrieved by a violation of Section 13-36-103 may bring an action in small claims court and shall be entitled to recover:
(a) costs pursuant to Section 78-6-15; and
(b) the greater of:

(i) the amount of actual monetary loss, not to exceed \$5,000 per day the violation occurs; or
(ii) \$500 for each violation, not to exceed \$5,000 per day the violation occurs."

2. Page 5, Line 133: Delete "(3)" and insert "(2)"

3. Page 5, Line 136: Delete "(4)" and insert "(3)"

4. Page 5, Line 140: Delete "(5)" and insert "(4)"

5. Page 5, Line 143: Delete "(6)" and insert "(5)"

6. Page 6, Line 153: After line 153 insert:
"Section 4. Section 13-36-106 is enacted to read:
13-36-106. Civil action for violation involving a sexually explicit email.
(1) For any violation of Section 13-36-103 involving unsolicited sexually explicit email, an action may be brought by:
(a) a person who received the unsolicited sexually explicit email with respect to which the violation of Section 13-36-103 occurred; or
(b) an email service provider through whose facilities the unsolicited sexually explicit email was transmitted.
(2) In each action under Subsection (1):
(a) a recipient or email service provider may:
(i) recover actual damages; or
(ii) elect, in lieu of actual damages, to recover the lesser of:
(A) \$5,000 per unsolicited sexually explicit email received by the recipient or transmitted through the email service provider; or
(B) \$25,000 per day that the violation occurs; and
(b) each prevailing recipient or email service provider shall be awarded costs and reasonable attorney fees."

Sen. Gladwell withdrew his motion.

David Watkiss, attorney, Ballard, Spahr, Andrews and Ingersoll spoke in support of the bill.

MOTION: Sen. Gladwell moved to amend 2ns Sub. S.B. 59 as follows:

1. Page 5, Line 144 Delete "clear and convincing" and insert "a preponderance of the"

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

MOTION: Sen. Evans moved to pass 2nd Sub. S.B. 59, as amended, out with a favorable recommendation.

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

4. H.B. 209 Sentencing for Use of Dangerous Weapon (G. Hughes)

Rep. Greg Hughes introduced the bill. Ron Gordon, Director, Utah Sentencing Commission assisted in the presentation.

MOTION: Sen. Buttars moved to pass H.B. 209 out with a favorable recommendation.

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

5. H.B. 210 Sexual Abuse of a Child Amendments (M. Thompson)

Ron Gordon introduced the bill in place of Rep. Mike Thompson.

MOTION: Rep. Arent moved to pass H.B. 210 out with a favorable recommendation.

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

MOTION: Rep. Arent moved to place H.B. 210 on the consent calendar.

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

MOTION: Sen. Evans moved to adjourn.

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

Committee Chair Bell adjourned the meeting at 5:55 p.m.

Minutes recorded by Sandra Maeser, Secretary

