

**MINUTES OF THE SENATE BUSINESS & LABOR  
STANDING COMMITTEE  
WEDNESDAY, FEBRUARY 8, 2006, 8:00 A.M.  
ROOM W015, WEST OFFICE BUILDING  
STATE CAPITOL COMPLEX**

Members Present: Sen. Scott K. Jenkins, Chair  
Sen. Gene Davis  
Sen. Thomas V. Hatch  
Sen. Parley G. Hellewell  
Sen. John W. Hickman  
Sen. Sheldon L. Killpack  
Sen. L. Alma Mansell  
Sen. Ed Mayne  
Sen. Michael Waddoups

Staff Present: John Cannon, Managing Policy Analyst  
Karen Allred, Committee Secretary

Public Speakers Present: Mark Shurtleff, Attorney General  
Jeff A Buel, Dir., Govt. Affairs, Johnson & Johnson, Vistakon  
Barbara Boner, Assist. Dir., Govt. Affairs, Novartis, Ciba Vision  
Lanny DuClos, President, Utah Optometric Association  
Jonathan Coon, CEO/President, 1-800 CONTACTS  
Joseph L. Hatch, MD, Associate Professor of Ophthalmology  
Craig Moody, Utah Construction Suppliers Association, Waste  
Management, and Reagan Outdoor Advertising  
Bill Rand, Boman & Kemp, Utah Construction Suppliers Association  
Lisa Keller, Exec. Committee, Utah Construction Suppliers Assoc.  
Taz Besinger, CEO, Home Builders Association  
Rich Thorn, President, Association of General Contractors  
Mike Smith, Utah Land Title Association  
Dewy Reagan, President, Reagan Outdoor Advertising  
Lyle McMillan, Utah Department of Transportation  
Licensing, Highway Administration  
Gordon Brokaw, Allied Waste

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

Committee Chair Jenkins called the meeting to order at 8:07 a.m., and welcomed John Cannon, Office of Legislative Research and General Counsel, filling in for Allison Morgan who is ill.

**1. H.B. 308 Insurance Policy and Contract Law Amendments (T. Kiser)**

Rep. Kiser introduced the bill.

**MOTION:** Sen. Killpack moved to pass the bill out favorably.

The motion passed unanimously with Sens. Hellewell, Mansell, Davis and Mayne absent for the vote.

**MOTION:** Sen. Killpack moved that the bill be placed on the Consent Calendar.

The motion passed unanimously with Sens. Hellewell, Mansell, Davis and Mayne absent for the vote.

2. **S.B. 176 Contact Lens Consumer Protection** (*C. Bramble*)

**MOTION:** Sen. Killpack moved to adopt **1st Sub. S.B. 176**.

The motion passed with Sens. Hellewell, Mansel and Davis absent for the vote.

Sen. Bramble introduced the bill.

Mark Shurtleff, Attorney General, and Jonathan Coon, CEO/President, 1-800 CONTACTS, spoke in support of the bill.

Jeff A. Buel, Director, Government Affairs, Johnson & Johnson, Vistakon; Barbara Boner, Assistant Director, Government Affairs, Novaris, Ciba Vision; Lanny DuClos, President, Utah Optometric Association, and Joseph L. Hatch, Medical Doctor, Associate Professor of Ophthalmology, expressed concerns with the bill.

**MOTION:** Sen. Hickman moved to pass out **1st Sub. S.B. 176** favorably.

The motion passed with Sens. Hellewell, Hickman, Killpack, Waddoups, Davis and Mayne voting in favor of the bill, Sens. Jenkins and Hatch voting in opposition and Sen. Mansell absent for the vote.

Sen. Hatch assumed the Chair.

3. **S.B. 161 Mechanics' Lien and Payment Amendments** (*S. Jenkins*)

**MOTION:** Sen. Jenkins moved to adopt **1st Sub. S.B. 161**.

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

Sen. Jenkins introduced and clarified the bill.

Craig Moody, Utah Construction Suppliers Association; Bill Rand, Boman & Kemp, Utah Suppliers Association; Taz Besinger, CEO, Home Builders Association; and Rich Thorn, President, Association of General Contractors, spoke in support of the bill.

**MOTION:** Sen. Killpack moved to pass out **1st Sub. S.B. 161** favorably.

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

**MOTION:** Sen. Davis moved to go to **S.B. 124**.

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

Committee Chair Jenkins resumed the Committee Chair.

**4. S.B. 124 Alcohol Beverage Control Amendments (P. Knudson)**

Sen. Knudson introduced the bill.

**MOTION:** Sen. Davis moved to reconsider the following amendments adopted by the Committee at the February 1, 2006 meeting.

**1. Page 6, Lines 171 through 172:**

171           (c) Judicial review of a final commission order concerning a disciplinary  
                  proceeding is  
172           governed by Section 32A-1-120 {and not} to the extent that Section 32A-1-120  
                  is inconsistent with Title 63, Chapter 46b, Administrative Procedures Act.

**2. Page 12, Line 357 through Page 13, Line 373:**

357           (1) (a) In a disciplinary proceeding, as defined in Section 32A-1-119, any [party]  
358           respondent named in a final order of the commission may seek judicial review  
                  pursuant to this  
359           section.  
360           ~~[(2) (a) The findings of the commission on questions of fact are final and are not~~  
361           ~~subject to review.]~~  
362           ~~[(b) "Questions of fact" include ultimate facts and findings and conclusions of~~  
                  ~~the~~

363 ~~commission on reasonableness and discretion.]~~  
364 {+} {-(3)} (b) After the hearing, the reviewing court shall enter  
judgment affirming or setting  
365 aside the order of the commission. {+}  
366 ~~{(b)}~~ (c) Judicial review of a final commission order concerning a  
disciplinary proceeding is  
367 governed by this section ~~{and not}~~ to the extent that it is inconsistent with  
Title 63, Chapter 46b, Administrative Procedures Act.  
368 (2) The reviewing court of a final commission order described in Subsection  
(1) shall {:-  
369 ~~—(a) review on the record the commission's final order for abuse of discretion;~~  
~~and~~  
370 ~~—(b) (i) affirm the commission's final order if the reviewing court finds that the~~  
371 ~~commission did not abuse its discretion; or~~  
372 ~~—(ii) remand the case to the commission for the commission to correct an error if~~  
~~the~~  
373 ~~reviewing court finds that the commission abused its discretion.~~ } review a final  
commission order de novo.

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

**MOTION:** Sen. Davis moved to amend the bill as follows:

1. *Page 6, Lines 171 through 172:*

171 (c) Judicial review of a final commission order concerning a disciplinary proceeding  
is  
172 governed by Section 32A-1-120 and ~~{not}~~ Title 63, Chapter 46b, Administrative  
Procedures Act.

2. *Page 12, Line 355 through Page 13, Line 388:*

355 32A-1-120. Judicial review of disciplinary proceeding -- Stay of commission  
356 order.  
357 (1) (a) In a disciplinary proceeding, as defined in Section 32A-1-119, any [party]  
358 respondent named in a final order of the commission may seek judicial review pursuant to  
~~{this~~

359 ~~section.~~ } **Title 63, Chapter 46b, Administrative Procedures Act, and Subsection**  
360 **(2).**

361 [(2)(a) The findings of the commission on questions of fact are final and are not  
362 subject to review.]

363 [(b) "Questions of fact" include ultimate facts and findings and conclusions of the  
364 commission on reasonableness and discretion.]

365 [(3) After the hearing, the reviewing court shall enter judgment affirming or setting  
aside the order of the commission.]

{ 366 **(b) Judicial review of a final commission order concerning a disciplinary  
proceeding is**

367 **governed by this section and not Title 63, Chapter 46b, Administrative Procedures  
Act:**

368 **(2) The reviewing court of a final order described in Subsection (1) shall:**

369 **(a) review on the record the commission's final order for abuse of discretion;  
and**

370 **(b) (i) affirm the commission's final order if the reviewing court finds that the  
371 commission did not abuse its discretion; or**

372 **(ii) remand the case to the commission for the commission to correct an error if  
the**

373 **reviewing court finds that the commission abused its discretion:**

} 374 ~~[(4)]~~ { ~~(3)~~ } **(2)** (a) The fact that a petition is pending in a reviewing court  
does not stay or

375 suspend the operation of any final order of the commission **that has not been stayed by  
the commission . Notwithstanding Title 63, Chapter 46a, Administrative  
Procedures Act, the stay or suspension of the operation of a final order of the  
commission is governed by this Subsection (2).**

376 (b) ~~[The]~~ Subject to Subsections { ~~(3)~~ } **(2)** (c) and (d), the reviewing court  
may order that the

377 commission's final order be stayed or suspended during the appeal.

378 (c) Before issuing an order staying or suspending the commission's final order, the  
379 reviewing court shall:

380 (i) give three days' notice to the parties; and

381 (ii) hold a hearing to receive argument and evidence on whether or not the  
382 commission's final order should be stayed or suspended.

383 (d) If the reviewing court decides to stay or suspend the commission's final order, it

- 384 shall make a written finding that:  
385 (i) great or irreparable damage would result to the petitioner absent the stay or  
386 suspension;  
387 (ii) specifies the nature of the damage; and  
388 (iii) is based upon evidence submitted to the court and identified by reference.

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

**MOTION:** Sen. Davis moved to pass the bill out favorably as amended.

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

**5. S.B. 191 Service Contracts Act Amendments (M. Waddoups)**

Sen. Waddoups introduced the bill.

Craig Moody, Waste Management, and Gordon Brokaw, Allied Waste, spoke to the bill.

**MOTION:** Sen. Hickman moved to pass the bill out favorably.

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

**6. S.B. 205 Real Property - Partial Release Reconveyance (T. Hatch)**

Sen. Hatch introduced the bill.

Sen. Hickman declared a Conflict of Interest.

Mike Smith, Utah Land Title Association, spoke in support of the bill.

**MOTION:** Sen Mansell moved to pass the bill out favorably.

The motion passed with Sen. Hickman voting in opposition.

**7. S.B. 222 Outdoor Advertising - Height Adjustment of Signs (P. Hellewell)**

Sen. Hellewell distributed the following amendment:

1. *Page 2, Lines 34 through 39:*

- 34 and 17-27a-103 is obstructed due to a noise abatement or safety measure, grade change,  
35 construction, directional sign, highway widening, or aesthetic improvement made by an  
agency  
36 of this state {~~;~~} [~~directional sign, or widening~~] {+} **along an interstate, federal  
aid primary highway**  
37 **existing as of June 1, 1991, {~~or~~} national highway systems highway , or state**  
**highway** {+} or by an improvement  
38 created on real property subsequent to the department's disposal of the property under  
Section  
39 72-5-111, the owner of the sign may:

**MOTION:** Sen. Hellewell moved to adopt the amendment.

The motion passed unanimously.

Craig Moody, Reagan Outdoor Advertising and Dewey Reagan, Reagan Outdoor Advertising, spoke in support of the bill.

Lyle McMillan, Department of Transportation, Right of Way Administration, spoke to the bill.

**MOTION:** Sen. Mayne moved to pass the bill out favorably as amended.

The motion passed unanimously.

**MOTION:** Sen. Mansell moved to adjourn.

The motion passed unanimously at 10:05 a.m.

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Sen. Scott K. Jenkins, Committee Chair