Approved: June 30, 2012

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(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 Thursday, February 16, 2012 in 346-S of the Capitol.

All members were present.

Committee staff present:
Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:
Representative John Rubin
Steve Howe, Johnson County District Attorney
Bret Landrith
Bill McKean

Others in attendance:
See attached.

Chairman Kinzer announced the Committee has one bill to hear today. His intent is to try and work today, as time permits, **HB 2533**, **HB 2106**, **HB 2482**, **HB 2621**, and **HB 2647**. If these bills are worked and time permits, **HB 2562** will be worked. The remainder of the bills, **HB 2629**, **HB 2260**, **HB 2562** and **HB 2655** may be worked on Monday, which is the last day to work non-exempt house bills. **HB 2521** and **HB 2523** are exempt bills, which may be worked Monday, if time permits, but if not, they will be worked in later.

Chairman opened the hearing on **HB 2655–Relating to interference with the judicial process** and announced he will keep each testifier's time to five minutes, in order to keep things moving. Chairman asked, since the revisors had not arrived, for Representative Rubin, the first to testify, to provide an overview of the bill.

Representative Rubin stated he supports **HB 2655** and that after reviewing the obstruction of justice statute in Kansas, he felt the language was inadequate. He looked at it in the aftermath of what happened in Johnson County in regards to the criminal case that was being pursued with

Planned Parenthood, both felony and misdemeanor charges. Most of the charges in the case had to be dismissed because the evidence, documents, had been shredded. The charge involved falsifying of records. There might be an obstruction of justice charge lodged for interference with the judicial process charge, assuming facts supported this. Even if facts did support finding that somebody had destroyed those documents with the intent to prevent the records from being used in a criminal prosecution against them, however the statutes were not sufficient to do anything about it. With that in mind, having been a federal lawyer for many years, the bill attempted to incorporate the language of the federal law obstruction of justice provisions into existing interference with judicial process statutes. On further review and consultation with attorneys and the Johnson County Attorney, better language was available in adapting Indiana'statute, which is more directly applicable to Kansas' state criminal prosecutions, and this adapted language has replaced the federal statutory provisions originally drafted in the bill. (Attachment 1)

Steve Howe testified in support of **HB 2655** stating many prosecutors have thought for a long time that Kansas has a generic statute. The current law gives judicial discretion to interpret the statute in ways that perhaps are different than what one thought was covered. His office did nationwide research and looked at how other states addressed the issue and what language they used. After looking at all the states, the Indiana model is the cleanest language that could be used, as it sets forth what things would be considered obstruction of justice. As a prosecutor for more than 20 years, there have been numerous cases where this statute could have been used to ensure justice is done. In this day and age of computers, people are more than happy to delete everything out, then there are no records available. Under the federal law, if it can be proved the individual intentionally did that to prevent a criminal prosecution, obstruction of justice charges can be made in the federal system. Kansas does not have this in the statute, and if language can be added to the statute, it would go a long way in holding people accountable for acts that should be against the law. (Attachment 2)

Brett Landrith testified in support of **HB 2655** advising he was an attorney who was disbarred because a disciplinary tribunal presented a falsified report which misrepresented, materially, that he failed to cite to record, to portray him as incompetent. It really was about his participation in an adoption proceeding where he was representing David Martin Price in an appeal of the termination of his parental rights. He still had his parental rights because he made a timely appeal. He was trying to get records thatwere withheld from him in the trial court, and the Kansas Supreme Court said Mr. Price had every right to. Unfortunately, the only record that was ever produced came after the trial court's ruling, and on its face, the record appeared to be altered. It would again be taking a child through fraud, by presenting a fraudulent document to

the court is kidnapping, it is a crime. In that instance, he was disbarred for making the request and the document, on its face, appeared to be altered. It was very important to the other attorney's strategy for defeating the Interstate Compact, which prevented trafficking of children. He hoped a version of this bill will be passed, which would be useful to be able to obtain justice from people who criminally used denial of records to obtain property or children unlawfully. (Attachment 3)

Bill McKean testified in support of **HB 2655** stating he drove up from Fort Worth, Texas today to appear before the Committee. He stated today was the first time he had a chance to actually look at K.S.A. 21-9505, and there are several things in the statute that actually could be used by a prosecutor, like Nola Foulston, or a district attorney from Johnson County, to try and retaliate against people, like him, who are trying to expose criminal racketeering. Mr. McKean asked the Committee to consider adding language to the bill similar to the Federal Criminal Statute 42 USC 1985. Mr. McKean cited two examples of recent times where he had provided specific criminal evidence that was never pursued by prosecutors or the appropriate leaders in government. Mr. McKean is concerned someone could use this law to prevent people like him from coming in and disclosing evidence of criminal racketeering. He asked the Committee to consider deleting in K.S.A. 21-5905 Section (2) (b) the language in the current statute thatprohibits repeated vituperative communication. (Attachment 4)

Chairman Kinzer closed the hearing on **HB 2655**.

Chairman Kinzer asked the Committee to consider final action on **HB 2533–Amending requirements and penalties for failure to report suspected child abuse**. Katherine McBride provided a brief overview of the bill content.

*Representative Brookens moved, Representative Ryckman seconded, to recommend **HB 2533** favorably for passage.*

*Representative Rubin moved, Representative Brookens seconded, to recommend **HB 2533** be amended with a balloon amendment.*

Representative Rubin passed out a balloon amendment and discussed the changes, stating on Page one, lines 30 through 32 were added at the request of the Kansas Board of Regents. (Attachment 5) On Page two, line 12, Subsection (6) the added language is consistent with this type of statute to tie in reporting by a person in a position of authority over a child and children or pregnant teenagers who are receiving such services from the organization. Subsection (7) was rewritten to address churches' obligation to report. Subsection (8) is the reporting requirement for employees of the state and the balloon adds employees of any municipality. On Page three,

the Kansas Board of Regents requested a change in Subsection (g), Lines 21 through 23, excusing someone from reporting when they thought another person had reported. Representative Rubin felt this language would defeat the purpose of the bill. The last balloon change, Subsection (l) addresses two kinds of exceptions to reporting, the penitential communications to an ordained minister of religion is under the protection of privilege as is the lawyer-client privilege.

Representative Kuether inquired whether there is a definition of duly ordained minister. Representative Brookens looked up the definition in K.S.A. 60-429. This balloon does pick up the terminology from the statute.

Representative Suellentrop questioned how we would know what "student enrollment" was and whether it is simply a signature enrollment, in the balloon at the bottom of Page one of the bill. Chairman Kinzer stated most student enrollments do involve a signature in most schools. Representative Rubin closed on his motion.

*Representative Rubin moved, Representative Brookens seconded, to recommend **HB 2533** be amended with a balloon amendment. Motion carried.*

Representative Kuether stated she supports the content of the bill, but there is a pretty hefty fiscal note and we have a message from the Secretary from Social and Rehabilitation Services this is not in the Governor's budget. Do we know if we pass the bill if the cost will be covered somewhere? Chairman Kinzer stated he knew this was Speaker O'Neal's bill, and his sense is if this is passed out of Committee and is voted on and passed by the House, the Speaker may have some influence over the Appropriations Committee so it would be funded.

*Representative Brookens moved, Representative Kuether seconded, to amend **HB 2533** to change the language on Page three, Subsection (g) Lines 21 through 23, to read "It is not a defense that a person did not make a report for fear of reprisal or any other consequence of making such a report;".*

On the Rubin balloon amendment, Page three, lines 21 through 23, if two people witness something and one goes immediately and reports it, the other does not, is it a crime. Take out, "that another person made a report or" so the line would read, "It is not a defense that a person did not make a report for fear of reprisal or any other consequence of making such a report;" Representative Brookens we do not intend to create a trap, he questioned whether it is wise to make it a crime. The goal is to make a report. When a good actor did not make the report, but when the report was in fact made, that should be a defense. The goal is that people report.

Representative Rubin expressed his appreciation of Representative Brookens amendment, saying he wrestled with the language. It is a concern of the Board of Regents also. In the Penn State Situation, if the student manager reported to Joe Paterno what he saw and Coach Paterno asked, "Did you report this to the authorities?" and the kid said, "Yes, I did, Coach," but in fact he hadn't, with this language it would relieve Coach Paterno from reporting, even though no report was made.

Representative Brookens responded if the report was made, you have no further duty. If the report was not made, there is still a duty to report it. If the report is made, it is not a crime not to report. If you wish to take on faith the other person reported it, that is the risk you bear.

Representative Rubin stated the question is not one of the kid's duty to report, but Coach Paterno's duty. The Coach believed the kid, but in fact the kid had not reported. Paterno got charged, and he made a defense he thought someone else made the report.

Representative Brookens said it does not exculpate the Coach because he thought someone made a report. Belief is not enough, but fact is.

Chairman Kinzer advised we are not listing any affirmative defenses, but factually one could raise it.

Representative Patton offered some language that might add some clarification to the bill and Representative Brookens' amendment. He suggested on Page three, Section (g) might read, "It is not a defense that one believes another person made a report unless a report had in fact had been made, or that a person did not make a report for fear of reprisal or any other consequence of making such a report." Representative Brookens accepted, with permission of the second, this is now the Brookens amendment. Representative Meier agreed.

Representative Smith stated being on this Committee the last two years, and listening to the lawyers discuss points, you frequently are concerned about how it is interpreted by the court. There may be a tendency to forget how police officers interpret statutes, very literally. Now, it is a good change. If you would have left this out, people would not have been charged because police officers would not have believed they could do it.

Representative Brookens moved, Representative Kuether seconded, to amend ***HB 2533*** *to change the language on Page three, Subsection (g) Lines 21 through 23, to read "It is not a defense that one believes another person made a report unless a report had in fact been made, or that a person did not make a report for fear of reprisal or any other consequence of making such a report;". Motion carried.*

Representative Pauls stated the testimony of SRS made a point of clarification. On Page two, lines two through six talk about "persons licensed by the secretary of health and environment or the secretary of social and rehabilitation services to provide child care". SRS actually does not license day care centers or foster homes. She stated that with the "or" in it, however, it may be enough but may not be as clear as it could be.

Representative Brookens stated perhaps it could say, "persons licensed by the state of Kansas". Representative Brookens advised there has been some advocacy to move it to the Department of Education. It would make no sense to have to rewrite the law if that were to take place. Chairman Kinzer concurred the change would do no harm and would cover licensing by the state.

*Representative Brookens moved, Representative Rubin seconded, to amend **HB 2533** on Page two, line two, to replace, "persons licensed by the secretary of health and environment or the secretary of social and rehabilitation services" with "persons licensed by the state of Kansas". Motion carried.*

Representative Meier inquired on Page one, line 30, whether this would cover anyone who was contracted. Chairman Kinzer stated an employee or a contractor would not be the same. Typically the concept of an employee is separate.

*Representative Meier moved, Representative Colloton seconded, to amend **HB 2533** on Page one, Line 30, to replace "any employee or administrator of" with "any employee, contractor or administrator of". Motion carried.*

*Representative Patton moved, Representative Smith seconded, to recommend **HB 2533** be favorably passed as amended. Motion carried.*

Chairman Kinzer asked the Committee to consider final action on **HB 2106–Relating to trespass and liability; exceptions**. Katherine McBride provided a brief overview of the content of the bill and handed out a balloon substitute amendment to the Committee. (Attachment 6)

Chairman Kinzer asked if this balloon was any different than the one handed out at the hearing. Clarification was made this is the same balloon amendment handed out at the hearing.

*Representative Suellentrop moved, Representative Kelly seconded, to recommend **Sub HB 2106** be passed favorably as amended.*

Representative Kuether stated there was testimony that suggested this might disrupt Kansas' case law regarding rights and duties of landowners, which causes her to pause, so she will not be supporting this bill.

Representative Suellentrop closed.

*Representative Suellentrop moved, Representative Kelly seconded, to recommend **Sub HB 2106** be favorably passed as amended. Motion carried.*

Chairman Kinzer asked the Committee to consider final action on **HB 2482–Relating to the Kansas adoption and relinquishment act; parental rights**. Katherine McBride provided a brief overview of the content of the bill and handed out a proposed balloon amendment (Attachment 7)

Chairman Kinzer acknowledged that Ms. McBride worked with the interested parties to prepare the balloon amendment and asked her to cover the amendment. This is meant to replace the current definition on Page five, lines 30 and 31 regarding defining the types of support.

Representative Ward moved to table the bill stating when dealing with children and court, the number one prime directive is mothers and fathers raise their children. Chairman Kinzer advised Representative Ward this is a non-debatable motion.

*Representative Ward moved, Representative Kuether seconded, to recommend **HB 2482** be tabled. Motion failed.*

*Representative Brookens moved, Representative Kelly seconded, to recommend **HB 2482** favorably for passage.*

*Representative Patton moved, Representative Smith seconded, to amend into **HB 2482** the balloon amendment previously described defining support.*

Representative Brookens stated in reading the bill through it seems reasonably balanced. On Page five, lines three and four, the definition of support becomes very important. But first we have to figure out if the father turns out to be able to support the mother. If the father does not know, it is not relevant whether he has supported the mother and this will not impact the situation. But where we have someone who is aware of the pregnancy, the duty of support does come up and we have guidelines in Kansas that are very helpful and give a sense of when it is appropriate and the amount. It creates a "rebuttable presumption," which means it is not guaranteed, carved in stone. We start the presumption or assumption that the father ought to be able to pay half of what the child support would be. The court can then impact this by saying, "But not in this case." It is still up to the courts to determine if it is fair, equitable and proper in

the particular case being addressed. For these reasons, Representative Brookens stated he supported this amendment.

*Representative Patton moved, Representative Smith seconded, to amend into **HB2482** the balloon amendment defining support. Motion carried.*

*Representative Brookens moved, Representative Pauls seconded, to amend into **HB2482** to remove on Page five, all of line 15 and remove "(B)" on line 16, and add a new Subsection (k) which would read, "If the court finds a separate ground for termination of rights under this section, the court may also consider the best interests of the child as the court balances the constitutional rights of both birth parents regarding adoption and requisite termination of rights".*

Representative Brookens stated the issue of best interests of the child is a very important issue as it comes up in family law on custody issues. In this setting, it is very important to watch the constitutionality and respect the rights of the natural parents because that is the primary function; as Representative Ward commented on, it is vital. We assume at the beginning that the parents are the best choice. If there are grounds for termination of rights, then according to this proposed balloon, the court has the ability to consider what the best interests of the child are. But it does not come up before that time.

Representative Patton asked Representative Brookens to explain how the bill changes current law. Representative Brookens stated it changes on Page five, lines 15 and 16. It appears that it is a consideration in weighing the best interests in whether to terminate parental rights. He was unaware whether this is the case and the Supreme Court has spoken to that. Chairman Kinzer offered this better captures what current case law actually suggests is the case, with respect to what happens in these circumstances. The best interests of the child are not a factor on the upfront decision. You cannot terminate merely on the basis of the best interests of the child, but having made the determination that there is a factor that would allow termination, you can then, subsequent to that, consider best interests of the child. That is existing law.

Representative Rubin clarified with Representative Brookens on Page five, line 16, that only the "(B)" is deleted.

Ms. McBride stated Page three, lines 27 through 29, the statement, "The court may consider the best interests of the child and the fitness of the non-consenting parent in determining whether a stepparent adoption should be granted." was removed. The placement of this is important because it applies to all adoptions including stepparent adoptions, whereas where the "best interests of the child" language was on Page five line 15, it wouldn't necessarily include stepparent adoptions.

Chairman Kinzer stated we would not take any more testimony, but if there is a need to take a moment to make sure we are clear as to what the effect of the amendment would be, that is fine.

Ms. McBride stated Jason was referring to Page three, lines 34 through 36, which contains a reference to stepparent adoptions and the best interests of the child. It would need to be removed, because with this amendment it would apply to stepparent adoptions as well take into account the constitutional rights of both birth parents.

Chairman Kinzer confirmed with the maker of the amendment that it apply in that fashion. Representative Brookens asked Ms. McBride to repeat what she stated. On Page three, lines 34 through 36, it states, "In all stepparent adoptions under this subsection, the court may consider the best interests of the child in determining whether parental rights should be terminated." It was replaced in the balloon and would apply to stepparent adoptions but it would also, in certain circumstances, if there is a finding there are separate grounds for termination of rights, allow the best interests of the child to be considered as the court balances the constitutional rights of the parents. It is a little bit different.

Representative Brookens stated he had thought of it in terms of Page three when he had composed it in his head. Chairman Kinzer confirmed that Representative Brookens intention would be this would apply to all adoptions. If this is the case, for clarity's sake we need to delete on Page three lines 34 through 36. Representative Brookens confirmed this as correct. Chairman Kinzer asked if he wanted to include this in his proposed amendment and Representative Brookens concurred. The second, Representative Pauls, also concurred with this addition to the Brooken's motion.

Representative Ward stated this is a bad bill done with the best of intentions. He has sat with adoptive parents who had helped the mother through the birth and had the mother change her mind when the baby was born, and knows what it is like to sit with parents who came and testified and had their hearts broken. What this bill tries to do is tip the scales in these cases to one side because of those sad cases. Here is the framework where these cases, not only in adoptions, but in juvenile court and divorce court, the prime directive is parents raise their children unless there are circumstances, such as physical abuse. Then this is a child in need of care case and we have to come in to court and prove by substantial evidence the child was physically abused, sexually abused, or neglected to a point that they are no longer fit to be parents. Or, in adoptions, where you have a single mother and the father has not provided support for two years, and the question is what is support. We had the conversation about monetary and emotional support. That is presumed to make you unfit to be a parent for purposes of terminating your rights, taking away your prime directive to raise your child. Best interests do not come into play unless parents are getting divorced and a choice has to be made between the two of them. So best interests come into play with which parent is better. In a child in need of

care case, when you have eliminated the parents as being fit to raise their children, there is a universe of people who claim that they should take care of the children. Grandparents, aunts and uncles, brothers and sisters, nieces and nephews, foster parents- there are a lot of people who want to raise the children. Then the court uses the best interest standard to determine which of these would be in the best interests of the child. First rule is, when it comes to non-parents, relatives are first-that is the grandparents, brothers, and sisters. In this situation, best interests do not come into play because usually you have a mother who has married another person who wants to adopt, or you have two adoptive parents. Why this is a bad bill is on Page four, line 41 where there is a new term called, "the totality of the circumstances". In a conversation with a conferee, it was virtually every time the adoptive parents are going to present more money, stronger life style, better house, better schooling, they are going to be more financial stable. If you look at the "totality of circumstances," sometimes the prime directive will get overruled. He does not think Kansas wants to leave the prime directive, which is that parents raise their children unless as otherwise defined in law. We should leave the decision with the judges who know the facts and issues of the case. Representative Ward suggested they table this bill, as he is opposed to this amendment and opposed to the bill.

Brookens closed on his motion.

Representative Brookens moved, Representative Pauls seconded, to amend ***HB2482*** *to remove on Page three, lines 34 through 36, "In all stepparent adoptions under this subsection, the court may consider the best interests of the child in determining whether parental rights should be terminated"; on Page five remove all of line 15 and remove "(B)" on line 16; and add a new Subsection (k) which would read, "If the court finds a separate ground for termination of rights under this section, the court may also consider the best interests of the child as the court balances the constitutional rights of both birth parents regarding adoption and requisite termination of rights". Motion carried 8 to 7.*

Representative Victors moved to table ***HB 2482*** *to July 1, 2012.*

Chairman Kinzer stated typically making the identical motion would not be in order. This is not an identical motion, which we do on the floor to delay things until a date certain. Representative Bruchman stated he is trying to remember the procedures also, but offered that the motion is different and could be considered. Chairman Kinzer expressed he needed to think through whether it is appropriate to move a bill be tabled until we are not in session. The bottom line is the Committee wants to table or not table this bill. It would be appropriate to make a motion to table the bill to a date when we are in session. If Representative Victors would want to make a motion to table until May 1, 2012, when they would still be in session, and after consultation with the ranking Minority leader, Chairman Kinzer advised that would be acceptable, if there was a second. It is a non-debatable motion.

*Representative Victors moved, Representative Bruchman seconded, to table **HB 2482** until May 1, 2012. Motion carried.*

Chairman Kinzer asked the committee to consider final action on **HB 2621–Relating to secured transactions**. Katherine McBride provided a brief overview of the contents of the bill.

*Representative Kuether moved—in honor of her dearly departed husband, Representative Colloton seconded, to recommend **HB 2621** favorably for passage. Motion carried.*

Chairman Kinzer asked the committee to consider final action on **HB 2647–Relating to the self-service storage act**. Katherine McBride provided a brief overview of the contents of the bill. She handed out a balloon amendment and explained the balloon. (Attachment 8) Currently, the operator of a storage facility could send notifications of default "by mail or e-mail" and this amendment would change it to read "by mail and e-mail," which would require the operator to notify the occupant on the first and second notifications of default by both mail and e-mail, if the address has been provided to the operator. On Page three, lines one through three, the words that were stricken are being brought back in to read, "Notices shall be deemed delivered when deposited with the United States postal service properly addressed as provided in subsection (b) with postage prepaid." The bill also defines on Page three, lines four through six, who an independent bidder is.

*Representative Pauls moved, Representative Ward seconded, to recommend **HB2647** favorably for passage.*

*Representative Pauls moved, Representative Ward seconded, to amend **HB 2647** with the balloon amendment.*

Representative Pauls stated the parties interested in this bill were in agreement with the amendments to the bill.

Representative Bruchman stated he supported this bill and the amendment.

*Representative Pauls moved, Representative Ward seconded to amend **HB 2647** with the balloon amendment. Motion carried.*

Chairman Kinzer stated, he had an issue with something that might be a relatively significant cost factor and that is the idea of requiring an ad to be placed in the classified section of the newspaper or any other commercially reasonable manner that results in the attendance of at least three independent bidders. He remembered testimony about how many people would come out to these sales as a result of finding these ads in the classified section of the newspaper and

wondered whether we should reconsider this language. Representative Bruchman agreed and offered a motion.

*Representative Bruchman moved, Representative Brookens seconded, to change **HB 2647** Subsection (3) (B) to read, "If there is no newspaper of general circulation in the jurisdiction where the sale is to be held, any other commercially reasonable manner that results in the attendance of at least three independent bidders at the sale of the designated time and place advertised." Motion carried.*

Representative Bruchman stated he had one more amendment he would propose. On Page one, line six, where it states, "if the occupant is in default for a period of more than 45 days" he would like to change the number of days to "60" days. He has been doing some reading and research in this area, and there have been a series of foreclosures in the United States and people have been forced to move a lot of their personal belongings into storage units. More time might be helpful for the families not to lose their items.

*Representative Bruchman moved, Representative Ward seconded, to amend **HB 2647** on Page one, line six, to change the default period of time from 45 days to 60 days.*

Representative Brookens stated if the owner of the storage unit was getting a substantial sum of money, he could be comfortable with 60 days. A month and a half is a long time to have no money coming in, and if it is changed to 60 days, the owners would end up going into the third month before they could sell the contents and rent out the unit. This was a time frame established some time ago and he has not heard anyone asking for this change. For this reason he would have to oppose the amendment.

*Representative Bruchman moved, Representative Ward seconded, to amend **HB 2647** to read on Page one, line six, to change the default period of time from 45 days to 60 days. Motion failed.*

Representative Rubin stated he also has an issue that was concerning him regarding Page two, Subsection (g), relieving the operator of any liability for dissemination of any of the things listed- criminal records, credit information, employment records and medical records. He could see how this might occur inadvertently, but wondered what if it was purposeful and malicious. Representative Brookens said that this was something he had marked at the hearing that gave him pause. The concern and the term that came to him was "willful disregard," but at the same time he did not think the owner has the duty to check to see what is in each box of a storage unit.

Chairman Kinzer stated what struck him was this is only a protection when items are sold under the self service storage act, so operators at least have the framework of the act and the timelines for notifications set forth. We do not want to give them protection for acting in bad faith, but if

the operator is doing the due diligence set forth in the self service storage act, is that enough of a protection.

*Representative Rubin moved, Representative Bruchman seconded, to amend **HB 2647** on page two, line 31, to add one word, "inadvertent" so the line reads, "The operator shall not be liable for the inadvertent".*

Representative Brookens offered that doing something to Subsection (g) other than striking it or leaving it, the "inadvertent" creates an obligation that is not there. Willful disregard still comes to mind, but we are not looking for a duty to examine. He did not think the proponents want that.

Chairman Kinzer suggested the Committee vote on the Rubin motion to amend and then see if anyone wants to address it further.

Representative Patton stated that he is going to oppose it because his understanding was we are trying to make the operator not liable for inadvertent dissemination, but every time there is a sale, that is intentional. That creates liability again. That is not really what we are trying to do.

Representative Rubin stated he respectfully disagrees with Representative Patton. As Subsection (g) reads, the inadvertent applies to the disclosure, discovery or dissemination of information, not to the sale. With regards to Representative Brookens' point, when we were debating a different bill, we were saying the absence of language did not create an obligation. It is proper statutory construction to say that there would be legislative intent that the operators' disclosure, discovery or dissemination was not inadvertent, then they are liable- it is not saying that, it is just silent on that. With those two observations, Representative Rubin closed on his amendment.

*Representative Rubin moved, Representative Bruchman seconded, to amend **HB 2647** on page two, line 31, to add one word, "inadvertent" so the line reads, "The operator shall not be liable for the inadvertent". Motion fails.*

Representative Bowman stated he has attended one of the auctions, and the storage unit door was opened and people could look in the unit, but were not allowed to more closely inspect any items. There is no assurance one is going to get personal records or not. He does not know if there is any evidence that people are misusing this type of information either. He suggested the Committee may be hung up on something that does not have as much importance as we think.

Chairman Kinzer stated he presumed that if there were a problem, there may be someone wanting to sue for negligence, and that is what Subsection (g) is trying to cover.

Representative Bruchman offered that he and Representative Rubin had one more suggestion, which is to consider adding in **HB 2647** on Page one, line 31, in front of all wording, "If the operator acts in good faith,".

Chairman Kinzer stated his only problem with this is he is trying to say is the operators do not know one way or the other whether they have sensitive documents that are in storage. The good faith needs to be linked to something more particular if we want to go down that road. Representative Collins stated he liked that clause, "If the operator acts in good faith," also.

Representative Kelly questioned whether there was something in the lease contract that the operator has no knowledge of the contents of the storage unit. Chairman Kinzer advised there probably is every kind of disclaimer possible in the contracts.

*Representative Brookens moved, Representative Bruchman seconded, to amend **HB 2647** on Page two, line 37, after the word "information", add ", unless the disclosure, discovery or dissemination is in willful disregard of the presence of such personal or private information."*

Chairman Kinzer asked if the words, "actual knowledge" before "of the presence" might help or hurt the clarification. Representative Brookens expressed that the words were not really necessary because if the operator has "willful disregard," they have to have knowledge.

Representative Patton stated he would oppose the motion because we either put in the clause and there is no liability and it is clear, or just strike Subsection (g) and let the contract between the operator and leasee govern the contract. They can prevent liability in the contract, and perhaps we should just strike the Subsection.

Chairman Kinzer stated he thinks the Committee has reached new clarity on this part of the bill.

Representative Brookens stated he agreed and closed on his motion.

*Representative Brookens moved, Representative Bruchman seconded, to amend **HB 2647** on Page two, line 37, after the word "information", add ", unless the disclosure, discovery or dissemination is in willful disregard of the presence of such personal or private information." Motion failed.*

Representative Rubin stated that because of the points made by Representative Kelly and Representative Patton, he agrees that parties can define in the contract what their liability is.

*Representative Rubin moved, Representative Bruchman seconded, to amend **HB 2467** to strike all of Subsection (g) on Page two, lines 31 through 37. Motion carried.*

Representative Bruchman asked for clarification whether Subsection (h) lines 40 through 43, whether those lines were stricken, as they deal with notices being sent by registered mail. Katherine McBride stated she would remove that because wherever a notice is sent out, it is indicated how it will be sent out, so we are not using restrictive mail, we have changed it to first-class mail and electronic mail so there would be no reason to have this sentence and it would contradict our amendment. Regarding the second sentence, it was requested by the conferee.

Representative Bruchman reclarified that on Page three we currently only have first-class mail. We put back in what is stricken on Page three, lines one through three, so we would know when those first-class notices were deemed delivered. Ms. McBride confirmed this clarification.

*Representative Bruchman moved, Representative Suellentrop seconded, to amend **HB 2647** to add back the previous language that notices be sent by restricted mail.*

Representative Bruchman stated he thought that would only be fair if an operator was going to liquidate the contents of a storage unit and so that there would be proof that the letter had been sent.

Katherine McBride clarified with Representative Bruchman by the use of restrictive mail, someone has to sign for it, and it costs $12 dollars to do that.

Chairman Kinzer clarified with Representative Bruchman that he desired that wherever restricted-mail notice was stricken that it be reinserted into the bill language. Representative Bruchman concurred.

*Representative Bruchman moved, Representative Suellentrop seconded, to amend **HB 2647** to add back language that notices be sent by "restricted mail" wherever the wording was previously stricken in the bill draft.*

Representative Brookens stated people who owe money do not pick up restricted mail or certified mail and you think it is going to come back to you refused. It is not. It comes back undelivered, which means you have nothing. It is a bad idea and he opposes it.

Representative Bruchman stated that you don't have proof that it was ever mailed without something from the post office. Representative Bruchman closed on his motion.

*Representative Bruchman moved, Representative Suellentrop seconded, to amend **HB 2647** to add back language that notices be sent by "restricted mail" wherever the wording was previously stricken in the bill draft. Motion failed.*

*Representative Brookens moved, Representative Ward seconded, to amend **HB 2647** on Page three, line five, to strike, "controlling interest in or" and on line six, strike "or occupant".*

Representative Brookens offered he finds it bothersome that a person with 49 percent in the project can bid in, and that is not controlling interest. Also, most operators would be pleased if the occupant family came in and put a bid in.

*Representative Brookens moved, Representative Ward seconded, to amend **HB 2647** on Page three, line five, to strike, "controlling interest in or" and on line six, strike "or occupant". Motion carried.*

*Representative Brookens moved, Representative Bruchman seconded, to recommend **HB 2647** be favorably passed as amended.*

Representative Rubin asked to confirm that there have been four amendments that have passed. This was confirmed by staff.

*Representative Brookens moved, Representative Bruchman seconded, to recommend **HB 2647** be favorably passed as amended. Motion carried.*

Chairman Kinzer asked the Committee to consider final action on **HB 2562–Relating to emergency care or assistance at the scene of an emergency or accident**. Katherine McBride provided a brief overview of the content of the bill, handed out a balloon amendment, and described what the balloon amendment changes. (Attachment 9)

*Representative Ryckman moved, Representative Kelly seconded, to report **HB 2562** favorably for passage.*

*Representative Brookens moved, Representative Kelly seconded, to amend **HB 2562** by adopting the balloon amendment.*

Representative Rubin asked the maker of the motion about the need for the second balloon. Representative Brookens stated it was someone else's language, but it is language that is in the statutes in other places.

Representative Smith asked if mirroring the language that is in other statues regarding minors, and the provision that emergency care or assistance can be given "to a person, including a minor without first obtaining the consent of the parent or guardian" is really necessary. Chairman Kinzer offered that mirroring the language decreases the likelihood that clever attorneys have an additional thing to argue about. Representative Smith questioned why we would not just want to say "any person". Chairman Kinzer suggested that then they would have to change the language in the other statutes.

Katherine McBride pointed out that this wording is not exactly the same language that is in other places, such as the health care provider Good Samaritan statute. Chairman Kinzer questioned what the difference was. Ms. McBride stated that the phrasing in the other statute is, "including treatment of a minor without first obtaining the consent of the parent or guardian of such minor." Chairman Kinzer stated that as he recalled that was a decision to leave out the word "treatment" because this bill is not addressing professional health care providers. Representative Brookens confirmed this was a conscious choice they made to leave it out.

*Representative Brookens moved, Representative Kelly seconded, to amend **HB 2562** by adopting the balloon amendment. Motion carried.*

*Representative Ruben moved, Representative Brookens seconded, to recommend **HB 2562** favorably for passage as amended. Motion carried.*

The next meeting is scheduled for Monday, February 20, 2012.

The meeting was adjourned at 5:52 p.m.