

Approved: 2-26-93

Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 12:00 p.m. on February 19, 1993 in room 526-S of the Statehouse.

All members were present except:

Representative Gilbert Gregory - Absent
Representative David Heinemann - Excused
Representative Judith Macy - Excused
Representative Don Smith - Excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Chairman O'Neal announced that the purpose of the meeting was to work bills previously heard.

HB 2041 - kansas underground damage prevention act.

Chairman O'Neal explained the balloon that was passed out on HB 2041. (Attachment #1) The first change would be to have a central statewide communications system. The amendment on page 4, changes the rebuttable presumption to make it the same as the overhead power line act. The amendment on line 40 would also pick up language of the overhead power line act. The amendment on page 4 makes the civil enforcement and penalties consistent with the overhead power line act. However, O'Neal talked with Glenn Smith of the Kansas Corporation Commission, and he stated that the language is in the underground act to comply with federal regulations and would keep them in compliance with the grant requirements that they have to be in compliance with by the end of the year. The last amendment would allow homeowners to be exempt the first time but may be penalized if the occupant has committed a prior violation of this act.

Representative Wells made a motion to report HB 2041 favorably for passage. Representative Carmody seconded the motion.

Representative Wells offered a substitute motion to amend on page 2, line 40 to change the word "three" to "two" and also page 3, line 35 to change the word "seven" to "ten".

Representative Mays seconded the motion. The motion carried.

Representative Everhart made a motion to amend the definition of "excavator" on page 1, line 29, to "exclude occupants of a dwelling who use such dwelling as a primary residence". Representative Pauls seconded the motion.

Representative Adkins stated that he believes that this amendment would send homeowners the message that they don't need to notify the utilities before they dig. The notification of this bill is a safety measure.

Chairman O'Neal explained that the policy issue was whether homeowners should be exempt. If not, then the language in the balloon would protect them on an initial violation.

The motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 12:00 p.m. on February 19, 1993.

Representative Robinett proposed an amendment on page 3, to delete lines 33-36. That would take out the duty for maintaining the markings for a period of time.

Representative Plummer seconded the motion. The motion carried.

Representative Mays offered an amendment on page 2, to strike lines 30-32 and replace the language with "‘Tolerance Zone’ means the area within 24 inches of the outside dimensions in all horizontal directions in and around the facility."

Representative Adkins seconded the motion. The motion carried.

Chairman O’Neal proposed a central One Call System rather than allowing multiple centers.

Representative Everhart made a motion to accept Chairman O’Neal’s proposal. Representative Bradley seconded the motion. The motion carried.

Chairman O’Neal proposed that in regard to the rebuttable presumption that the committee should be consistent and adopt the language that is used in the overhead power line safety act.

Representative Everhart made a motion to accept Chairman O’Neal’s proposal. Representative Adkins seconded the motion. The motion carried.

Chairman O’Neal proposed that the committee make a change on page 4, line 40 by adding the language in the balloon amendment stating that nothing in this act is intended to limit or modify the provisions of K.S.A. 60-258a and by adding the applicability of the national electrical safety code.

Representative Garner made a motion to accept the proposal. Representative Everhart seconded the motion. The motion carried.

Representative Rock made a motion to strike the words “on or” on page 1, line 24. Representative Garner seconded the motion. The motion carried.

Representative Wells made a motion to insert the word “city” after the word “by” on page 2, line 21. Representative Pauls seconded the motion. The motion carried.

Representative Wells made a motion to also include the word “counties” on page 2, line 21. Representative Rock seconded the motion. The motion carried.

Representative Wells renewed the motion to report HB 2041 favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.

HB 2168 - exempting student aid money from garnishment proceedings.

Representative Adkins made a motion to report HB 2168 favorably for passage. Representative Scott seconded the motion. The motion carried.

Jill Wolters stated that there needs to be a technical clean up amendment on page 2, to strike subsection (d)lines 4-7.

Representative Pauls made a substitute motion to accept the proposed amendment. Representative Rock seconded the motion. The motion carried.

Representative Adkins renewed the motion to report HB 2168 favorably for passage as amended. Representative Scott seconded the motion. The motion carried.

HB 2172 - annual meetings for corporations.

Representative Mays made a motion to report HB 2172 favorably for passage. Representative Carmody seconded the motion. Representative Mays gave a brief explanation of the bill. Committee discussion followed. The motion carried.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 526-S, Statehouse, at 12:00 p.m. on February 19, 1993.

HB 2412 - emergency assistance at a scene of accident.

Representative Scott made a motion to report HB 2412 favorably for passage. Representative Adkins seconded the motion.

Chairman O'Neal made the proposal that the committee consider the KBI amendment that would add the word "or" and then delete it on page 2, line 11. This is necessary because the current statute has the word "or" in it.

Representative Adkins made a substitute motion to accept this proposal. Representative Wells seconded the motion. The motion carried.

Chairman O'Neal stated that the next request, also from the KBI, would include the National Safety Council in the list of organizations that may approve first aid programs.

Representative Pauls made a motion to accept this proposal. Representative Wells seconded the motion. The motion carried.

Chairman O'Neal stated that the last request would make the bill effective upon publication in the Kansas Register.

Representative Pauls made a motion to accept this proposal. Representative Rock seconded the motion. The motion carried.

Representative Garner suggested that on page 2, line 8 the committee change the statute cited to be K.S.A. 65-6112. He thought the statutory reference in the bill was incorrect.

Representative Rock seconded the motion. The motion carried.

Representative Adkins renewed the motion to report HB 2412 favorably for passage as amended. Representative Wells seconded the motion. The motion carried.

The Chairman questioned if the committee was interested in adding a new section that would protect the employer from liability as requested by MedeVac. No further action was recommended.

HB 2167 - civil procedure for limited actions include chapter 60 sanctions for filing frivolous claims.

Representative Adkins made a motion to report HB 2167 favorably for passage. Representative Robinett seconded the motion. Committee discussion followed.

Representative Garner stated that he is opposed to the bill. It is a tool of intimidation to get quick resolution of collection cases.

Representative Plummer commented that there are two issues. The first, which he is not in favor of, deals with extending K.S.A. 60-007, but that K.S.A. 60-211 pertains to a lawyer's signing a pleading.

Representative Adkins stated that this bill has received favorable response from the people he has talked to.

The motion to pass failed.

HB 2272 - opening records of juvenile offenders.

Representative Everhart made a motion to report HB 2272 favorably for passage. Representative Pauls seconded the motion. Committee discussion followed.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 526-S, Statehouse, at 12:00 p.m. on February 19, 1993.

Representative Carmody made a substitute motion to allow the records to be opened only if the crime committed would have been an A,B or C felony. Representative Robinett seconded the motion. The motion carried.

Representative Pauls made a motion to add "15" after the word "or" on page 1, line 21 and also on line 23 to distinguish the 14 and 15 year olds under the act from those 16 to 18 years old. Representative Everhart seconded the motion. The motion carried.

Representative Everhart renewed the motion to report HB 2272 favorably for passage as amended. Representative Garner seconded the motion. The motion carried. Representative Rock requested that he be recorded as a "no".

The Committee adjourned at 2:00 p.m. The next Committee meeting is February 22, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 19, 1993

[illegible]

HOUSE BILL No. 2041

By Committee on Energy and Natural Resources

1-14

8 AN ACT enacting the Kansas underground utility damage prevention
9 act; concerning prevention of damage to certain underground util-
10 ity facilities.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the
14 Kansas underground utility damage prevention act.

15 Sec. 2. As used in this act:

16 (a) "Damage" means any impact or contact with an underground
17 facility, its appurtenances or its protective coating, or any weakening
18 of the support for the facility or protective housing which requires
19 repair.

20 (b) "Emergency" means any condition constituting a clear and
21 present danger to life, health or property, or a customer service
22 outage.

23 (c) "Excavation" means any operation in which earth, rock or
24 other material on or below the ground is moved or otherwise dis-
25 placed by any means, except tilling the soil, or railroad or road and
26 ditch maintenance that does not change the existing railroad grade,
27 road grade and/or ditch flowline, or operations related to exploration
28 and drilling of crude oil or natural gas, or both.

29 (d) "Excavator" means any person who engages directly in ex-
30 cavation activities within the state of Kansas.

31 (e) "Facility" means any underground line, system or structure
32 used for producing, gathering, storing, conveying, transmitting or
33 distributing gas, electricity, communication, petroleum, petroleum
34 products or hazardous liquids.

35 (f) "Marking" means the use of stakes, paint or other clearly
36 identifiable materials to show the field location of underground fa-
37 cilities, in accordance with the resolution adopted August, 1984, by
38 the utility location coordination council of the American public work
39 association.

40 (g) "Notification center" means [a center] operated by an organi-
41 zation which has [a minimum of five underground operators partic-
42 ipating and has] as one of its purposes to receive notification of
43 planned excavation in [a specified area] from excavators and to dis-

[the statewide communication system

[the state

1 seminate such notification of planned excavation to operators who
2 are members and participants.

3 (h) "Operator" means any person who owns or operates an un-
4 derground facility, except for any person who is the owner of real
5 property wherein is located underground facilities for the purpose
6 of furnishing services or materials only to such person or occupants
7 of such property.

8 (i) "Preengineered project" means a public project or a project
9 which is approved by a public agency wherein the public agency
10 responsible for the project, as part of its engineering and contract
11 procedures, holds a meeting prior to the commencement of any
12 construction work on such project in which all persons, determined
13 by the public agency to have underground facilities located within
14 the construction area of the project, are invited to attend and given
15 an opportunity to verify or inform the public agency of the location
16 of their underground facilities, if any, within the construction area
17 and where the location of all known and underground facilities are
18 duly located or noted on the engineering drawing as specifications
19 for the project.

20 (j) "Permitted project" means a project where a permit for the
21 work to be performed must be issued by a state or federal agency
22 and, as a prerequisite to receiving such permit, the applicant must
23 locate all underground facilities in the area of the work and in the
24 vicinity of the excavation and notify each owner of such underground
25 facilities.

26 (k) "Person" means any individual, partnership, corporation, as-
27 sociation, franchise holder, state, city, county or any governmental
28 subdivision or instrumentality of a state and its employees, agents
29 or legal representatives.

30 (l) "Tolerance zone" means the area within 12 inches of the out-
31 side dimensions in all horizontal directions and 24 inches in vertical
32 direction of an underground facility.

33 (m) "Working day" means every day, except Saturday, Sunday
34 or a legally proclaimed local, state or federal holiday.

35 Sec. 3. An excavator shall not engage in excavation near the
36 location of any underground facility without first having ascertained,
37 in the manner prescribed in this act, a location of all underground
38 facilities in the proposed area of the excavation.

39 Sec. 4. (a) An excavator shall serve notice of intent of excavation
40 at least three full working days, but not more than 10 working days
41 before commencing the excavation activity, on each operator having
42 underground facilities located in the proposed area of excavation.

43 (b) The notice of intent of excavation shall contain the name,

1 address and telephone number of the person filing the notice of
 2 intent, the name of the excavator, the date the excavation activity
 3 is to commence and the type of excavation being planned. The notice
 4 shall also contain the specific location of the excavation if it is to
 5 take place within the boundaries of a city or the specific quarter
 6 sections if outside the boundaries of any city.

7 (c) The provisions of this section shall not apply to a preengi-
 8 neered project or a permitted project, except that the excavators
 9 shall be required to give notification in accordance with this section
 10 prior to starting such project.

11 Sec. 5. (a) This act recognizes the value of and encourages and
 12 authorizes the establishment of notification ~~centers~~. Each operator
 13 who has an underground facility shall become ~~a~~ member of a no-
 14 tification center.

15 (b) Upon the establishment of a notification center in compliance
 16 with this act, notification, as required by section 4, to operators ~~who~~
 17 ~~are members of the notification center~~ shall be given by notifying
 18 the notification center by telephone at the toll free number. The
 19 content of such notification shall be as required by section 4.

20 (c) Each operator who has an underground facility within the
 21 ~~defined geographical boundary of a notification center~~ shall be af-
 22 forded the opportunity to become a member of the notification center
 23 on the same terms as the original members.

24 (d) A suitable record shall be maintained by ~~notification centers~~
 25 to document the receipt of notices from excavators as required by
 26 this act.

27 Sec. 6. (a) An operator served with notice shall, in advance of
 28 the proposed excavation, unless otherwise agreed between the par-
 29 ties, inform the excavator of the tolerance zone of the underground
 30 facilities of the operator in the area of the planned excavation by
 31 marking, flagging or other acceptable method no sooner than two
 32 working days prior to planned excavation.

33 (b) An operator is responsible for maintaining the identification
 34 of the tolerance zone by marking, flags, or other locating identifiers
 35 for seven working days. An excavator is required to serve notice of
 36 excavation after that time if location is required.

37 (c) If the operator notifies the excavator that it has no under-
 38 ground facilities in the area of the planned excavation, fails to respond
 39 or improperly marks the tolerance zone for the facilities, the exca-
 40 vator may proceed and shall not be liable for any direct or indirect
 41 damages resulting from contact with the operator's facilities, except
 42 that nothing in this act shall be construed to hold any excavator
 43 harmless from liability in those cases of gross negligence or willful

a single

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1 and wanton conduct.

2 Sec. 7. In the case of an emergency which involves danger to
3 life, health or property or which requires immediate correction in
4 order to continue the operation of an industrial plant or to assure
5 the continuity of public utility service, excavation, maintenance or
6 repairs may be made without using explosives, if notice and advice
7 thereof, whether in writing or otherwise are given to the operator
8 or notification center as soon as reasonably possible.

9 Sec. 8. This act shall not be construed to authorize, affect or
10 impair local ordinances, resolutions or other provisions of law con-
11 cerning excavating or tunneling in a public street or highway or
12 private or public easement.

13 Sec. 9. Upon receiving information as provided in section 6, an
14 excavator shall exercise such reasonable care as may be necessary
15 for the protection of any underground facility in and near the con-
16 struction area when working in close proximity to any such under-
17 ground facility.

18 Sec. 10. When any contact with or damage to any underground
19 facility occurs, the operator shall be informed immediately by the
20 excavator. Upon receiving such notice, the operator shall immedi-
21 ately dispatch personnel to the location to provide necessary tem-
22 porary or permanent repair of the damage. If a serious electrical
23 short is occurring or dangerous gases or fluids are escaping from a
24 broken line, the excavator shall immediately inform emergency
25 personnel.

26 Sec. 11. (a) In a civil action in a court of this state when it is
27 shown by competent evidence that [damage to the underground fa-
28 cilities of an operator resulted from excavation activities and that the
29 excavator responsible for giving notice of intent to excavate failed to
30 give such notice, or excavation occurred outside the notice and
31 marked area, there shall be a rebuttable presumption that the ex-
32 cavator was negligent for failing to give such notice or abide by the
33 notice given]

34 (b) The provisions of subsection (a) shall not apply if the operator
35 whose underground facilities are damaged fails to participate in [a]
36 notification center.

37 (c) In no event shall the excavator be responsible for any damage
38 to underground facilities if such damage was caused by the failure
39 of the operator to correctly and properly mark the location of the
40 tolerance zone of the damaged facility.

41 Sec. 12. [Any person to whom this act applies, who violates any
42 of the provisions contained in this act, shall be subject to civil
43 penalties and injunctive relief as set out in K.S.A. 66-1.151. and]

personal injury, death or other damages,
including damage to any underground
facilities, occurred as a result of a
violation of this act, there shall be a
rebuttable presumption of negligence on the
part of the violation.

the

(d) Nothing in this act is intended to
limit or modify the provisions of:

(1) K.S.A. 60-258a, and amendments
thereto; or

(2) the national electrical safety code,
which would otherwise be applicable.

(a)

1 amendments thereto.]

2 Sec. 13. This act shall be administered and enforced by the state
3 corporation commission of the state of Kansas.

4 Sec. 14. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, the remainder of the act
6 and the application of such provision to other persons or circum-
7 stances shall not be affected thereby.

8 Sec. 15. This act shall take effect and be in force from and after
9 its publication in the statute book.

may be subject to a civil penalty in
set by the court of not more than \$1,000
each violation. The provisions of this
subsection shall not apply to a person who,
at the time the act or acts occur which
constitute a violation, is acting as an agent
or employee under the direction of an
individual, firm, joint venture, partnership,
corporation, association, municipality or
governmental unit.

(b) Occupants of a dwelling, who use such
dwelling as a primary residence may be
penalized under this subsection only if
can be established by competent evidence that
such occupant has committed a prior violation
of this act.