

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by SENATOR ROBERT V. TALKINGTON at
Chairperson

9:00 a.m. a.m./p.m. on Wednesday, March 28, 1984 in room 254-E of the Capitol.

All members were present except:

Senator Hein

Committee staff present:

Fred Carman, Hank Avila, Rosalie Black

Conferees appearing before the committee:

HB 2646 - Representative Thomas Walker; Scott Lambers, City of Overland Park

HB 2855 - Representative Leroy Fry; Bill Bryson, Dept. of Health and Environment;
Ken Johnson, LP Gas Assoc.; Nancy Kantola, KS Cooperative Council;
Tom Whitaker, KS Motor Carrier Assoc.; Ross Martin, KS Petroleum Council;
Kathleen Sebelius, KS Trial Lawyers Assoc.; Jerry Palmer, Attorney

The meeting was called to order by Senator Talkington, Chairman, for hearing
on House Bill 2646 and House Bill 2855.

HOUSE BILL 2855 - HEARING

Representative Leroy Fry explained HB 2855 which, if passed, would exempt
individuals helping at the site of hazardous material accidents from legal liability.
He recommended taking out the 18 hour time limit for cleaning up hazardous wastes in
Line 42 and reinstating striken language in old Section 2, Lines 36-41, and striking
new Section 2 which does not effectively define the word "emergency." (Attachment 1.)

Ken Johnson indicated that Kansas is the second largest storer of propane in
the United States and the LP Gas Association would like to protect experts called
in to help in emergencies. He added that Col. Mahlon Weed, Division of Emergency
Preparedness, Adjutant General's Office, is also in support of HB 2855. (Attachment 2.)

Nancy Kantola, Tom Whitaker, Ross Martin and Bill Bryson testified in support
of HB 2855 indicating that experts may refuse to help at the site of an accident
spill because of fear of being involved in legal action. They also favored the
amendments requested by Representative Fry. (Attachment 3.)

Kathleen Sebelius introduced Jerry Palmer who said future legal cases involving
hazardous waste clean up will have phantom defendants and he suggested taking out of
the bill any reference to responsibilities of spillers or victims.

HOUSE BILL 2646 - HEARING AND ACTION

Representative Thomas Walker said his interest in HB 2646 originated during a

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 SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m. a.m./p.m. on March 28, 1984

HOUSE BILL 2646 - HEARING AND ACTION (con't)

meeting with people in wheelchairs. He added that HB 2646 would allow handicapped individuals to have a hanging card and license plates. Currently, regulations permit only one of the items.

Scott Lambers spoke in support of the amendment by the House allowing lowering of 7ft. handicapped parking signs to 32 in. since it would take the City of Overland Park four years to act by ordinance.

Senator Meyers moved that HB 2646 be reported favorable for passage; seconded by Senator Burke and passed.

The meeting adjourned at 10:00 a.m.

Robert V. Jankoff

Please PRINT Name, Address, the organization you represent, and the Number of the Bill in which you are interested. Thank you.

H 2646

H 2855

NAME	ADDRESS	ORGANIZATION	BILL NO.
Juan Lemercy		SRS	HB 2646
BOB LAMBERS	OVERLAND PARK	OVERLAND PARK	HB 2646
Ken Rissler	Topeka	KLP Das Assn	HB 2855
Mary Turkington	Topeka	Kansas Motor Carrier Assn	HB 2855
Tom Whitaker	Topeka	Ks Motor Carrier Assn	HB 2855
Ken Salmon	"	KLP Co A	HB 2855
ROSS MARTIN	"	KPC	"
AMOS KRAMER	"	"	"
Ref. L. ...	"	Leg	HB 2855
Charles Nicolay	"	Ks Oil Marketers Assn	HB 2855
Nancy Pantla	"	Ks Co-op Council	HB 2855
Hallam Selphus	"	KLH	HB 2855
J. A. Palmer	"	Ks Total Lenses Assn	HB 2855

TESTIMONY OF LeROY FRY BEFORE THE
SENATE TRANSPORTATION COMMITTEE ON HOUSE BILL 2855

MR. CHAIRMAN, MEMBERS OF THE TRANSPORTATION COMMITTEE, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU AND EXPLAIN HB 2855. HOWEVER, BEFORE I DISCUSS THE BILL I WOULD LIKE TO MAKE TWO SUGGESTIONS ON AMENDMENTS MADE IN THE HOUSE. UNDER SECTION 1 SUBSECTION (d) "Emergency shall not exceed 18 hours from the discovery of an actual or threatened discharge of hazardous materials." I FEEL THIS SHOULD BE DELETED FROM THE BILL AS IT COULD CAUSE MANY PROBLEMS. THE WORD EMERGENCY IS NOT DEFINED. IN MANY POTENTIAL ACCIDENTS SUCH AS A TRAIN DERAILMENT, 18 HOURS WOULD NOT BE SUFFICIENT TIME TO REMOVE ALL THE HAZARDOUS MATERIALS FROM THE SCENE. I WOULD URGE YOU TO DELETE NEW SUBSECTION (d) UNDER SECTION 1. OF THE STATES THAT HAVE PASSED SUCH LEGISLATION, I KNOW OF NONE THAT HAS PUT A TIME LIMIT ON REMOVAL.

ALSO, I WOULD LIKE FOR YOU TO LOOK AT NEW SECTION 2 (a) AND SUGGEST THE LANGUAGE IN MY MODEL BILL SECTION 2 (a) MAKES FOR A BETTER LAW. IN THE AMENDMENT WE SEE THE WORD EMERGENCY WITHOUT A DEFINITION.

GOVERNMENTS AT ALL LEVELS--FEDERAL, STATE AND LOCAL--HAVE RECENTLY ACTED TO STRENGTHEN PROGRAMS TO REGULATE THE HANDLING, STORAGE AND TRANSPORTATION OF HAZARDOUS MATERIALS, IN ORDER TO MINIMIZE THE RISK AND DANGER OF ACCIDENTS INVOLVING THESE MATERIALS. EVEN THOUGH THESE EFFORTS SHOULD HAVE A SIGNIFICANT IMPACT, SOME ACCIDENTS WILL NEVERTHELESS OCCUR. WHEN THEY DO, THE OVERRIDING PUBLIC CONCERN IS TO GET QUALIFIED PERSONS QUICKLY TO THE SCENE BECAUSE OF THE GRAVE DANGER IN MANY INSTANCES OF FIRE, EXPLOSIONS, SERIOUS CONTAMINATION OF AIR OR GROUNDWATER, OR OTHER ENVIRONMENTAL DAMAGE.

SUCH ACCIDENTS, PARTICULARLY THOSE INVOLVED WITH TRANSPORTATION, OFTEN OCCUR AT REMOTE LOCATIONS. IT TAKES TIME FOR THE PARTY ULTIMATELY RESPONSIBLE

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FOR HANDLING THE SITUATION TO ARRIVE ON THE SCENE. LOCAL GOVERNMENTAL AGENCIES SUCH AS FIRE AND POLICE DEPARTMENTS, OFTEN HAVE LIMITED MEANS OR KNOWLEDGE AS TO HOW TO HANDLE THE PARTICULAR MATERIAL INVOLVED. THE BEST SOLUTION WOULD BE TO SEEK THE IMMEDIATE ASSISTANCE OF THOSE EXPERTS NEARBY TO MITIGATE THE THREAT TO THE PUBLIC AS SOON AS POSSIBLE.

THE STUMBLING BLOCK IS THAT THESE EXPERTS, IF THEY RESPOND TO SUCH CALLS FOR ASSISTANCE AS GOOD SAMARITANS, EXPOSE THEMSELVES TO THREATS OF ENDLESS LITIGATION BY THIRD PARTIES. IRONICALLY, BY NOT DOING ANYTHING, THEY CAN AVOID SUCH EXPOSURE. THERE THUS EXISTS IN MANY STATES A LEGAL DISINCENTIVE FOR EXPERT VOLUNTEERS TO ASSIST IN HAZARDOUS MATERIALS EMERGENCIES. THE REAL LOSER HAS BEEN THE PUBLIC.

AN ANALOGOUS SITUATION ONCE EXISTED FOR MEDICAL EMERGENCIES. TO CORRECT IT, MANY STATES ADOPTED LEGISLATION EXEMPTING PHYSICIANS AND OTHER PERSONS FROM THE NORMAL CIVIL LIABILITY TO WHICH THEY WOULD OTHERWISE BE EXPOSED BY VOLUNTARILY ASSISTING IN MEDICAL EMERGENCIES. THROUGH SUCH LEGISLATION, GOOD SAMARITAN ACTIONS IN SUCH INSTANCES ARE ENCOURAGED IN 48 STATES AND THE DISTRICT OF COLUMBIA.

IN ORDER TO ENCOURAGE SIMILAR ACTS IN RESPONSE TO HAZARDOUS MATERIALS EMERGENCIES, SIMILAR PROTECTIONS SHOULD BE EXTENDED TO INDIVIDUALS AND ORGANIZATIONS THAT VOLUNTARILY PROVIDE UNCOMPENSATED ASSISTANCE. HB 2855 THAT WE OFFER TODAY, WOULD MEET THIS AIM.

THE BILL WOULD NOT EXTEND LIABILITY PROTECTION TO THOSE PARTIES:

-WHOSE ACTS OR OMISSIONS CAUSED THE EMERGENCY:

-WHO RECEIVE COMPENSATION (OTHER THAN REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES) FOR THEIR SERVICES IN RENDERING ASSISTANCE:

-WHOSE ACTIONS CONSTITUTE GROSS NEGLIGENCE OR RECKLESS, WANTON OR INTENTIONAL MISCONDUCT.

RECENTLY, THE NATIONAL TRANSPORTATION SAFETY BOARD, IN ITS REPORT ON THE DERAILMENT OF AN ILLINOIS CENTRAL GULF RAILROAD FREIGHT TRAIN AT LIVINGSTON, LOUISIANA, ON SEPTEMBER 28, 1982, HAD OCCASION TO EXAMINE THE MERITS OF GOOD SAMARITAN LEGISLATION. IN THEIR AUGUST 10, 1983, REPORT, THEY STATED:

"The Safety Board is concerned that growing fear of claims will increasingly discourage timely assistance by those familiar with hazardous materials properties in accidents that occur where 'Good Samaritan' laws do not exist. The transporters who have the responsibility for dealing with the commodities in an accident must necessarily rely on voluntary expert assistance.

"The lack of 'Good Samaritan' legislation in Louisiana and many other States have led to reluctance on the part of chemical companies to render timely and urgently-needed technical assistance in hazardous materials emergencies. The need for some form of uniform protection under the law to assure that such assistance will be forthcoming in future emergencies should be studied."

I WISH FURTHER TO STATE THAT HB 2855 HAS BEEN REVIEWED BY AND HAS THE TOTAL SUPPORT OF THE: AMERICAN PETROLEUM INSTITUTE, AMERICAN TRUCKING ASSOCIATIONS, ASSOCIATION OF AMERICAN RAILROADS, CHEMICAL MANUFACTURERS ASSOCIATION, COMPRESSED GAS ASSOCIATION, HAZARDOUS MATERIALS ADVISORY COUNCIL, NATIONAL LP-GAS ASSOCIATION, AND NATIONAL TANK TRUCK CARRIERS, AND THEIR CORRESPONDING STATE OF KANSAS ASSOCIATIONS.

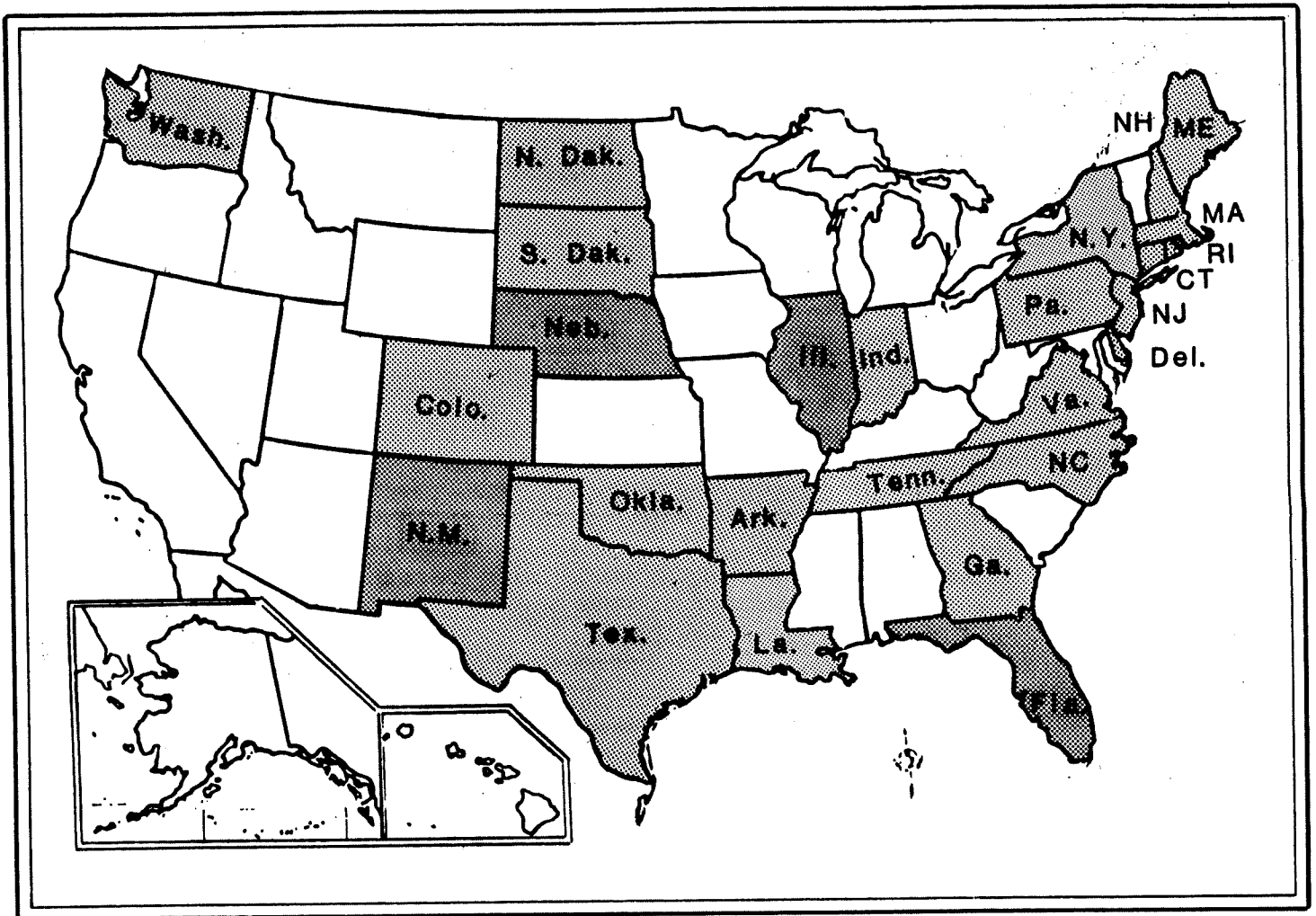
IN CLOSING, I WOULD LIKE TO STATE THAT GOOD SAMARITAN LEGISLATION ON HAZARDOUS MATERIALS HAS NOW BEEN PASSED INTO LAW IN 26 STATES. ELEVEN STATES HAVE TAKEN THIS MEASURE UP THIS YEAR.

OF THE THREE ORGANIZATIONS THAT DEAL WITH STATE GOVERNMENT, THE COUNCIL

OF STATE GOVERNMENTS AND THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL IN THEIR PUBLICATION "SUGGESTED STATES LEGISLATION" HAVE LISTED A MODEL GOOD SAMARITAN BILL AND URGED ITS PASSAGE.

AS YOU ALL KNOW, THE NATIONAL CONFERENCE OF STATE LEGISLATORS DOES NOT ENDORSE ANY PARTICULAR LEGISLATION, BUT THEY HAVE PRINTED THE BILL AND URGED ALL LEGISLATORS TO GIVE IT A GOOD LOOK.

La Roy Fry



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States continue to pass Good Samaritan laws

ILLINOIS, NEW MEXICO, and now NEBRASKA have become the latest states to adopt Good Samaritan legislation protecting companies from liability when they respond to an accident in-

volving LP-gas. This brings to 26 the number of states that have adopted such legislation, with similar laws having passed at least one legislative body in another 6 states.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM KEN JOHNSON, EXECUTIVE VICE PRESIDENT, OF THE KANSAS LP GAS ASSOCIATION.

THE KANSAS LP GAS ASSOCIATION IS AN ORGANIZATION OF LP GAS DISTRIBUTORS, PRODUCERS, SUPPLIERS AND WHOLESALERS WITHIN THE STATE OF KANSAS. SOME 86% OF THE LP-GAS DEALERS, REPRESENTING 95% OF THE RETAIL VOLUME ARE MEMBERS OF THE KLPGA.

OUR INDUSTRY IS JUSTLY PROUD OF THOSE WHO VOLUNTARILY COME FORWARD AND RENDER AID AT THE SCENE OF AN EMERGENCY. BUT THERE ARE EQUALLY QUALIFIED AND CONSCIENTIOUS COMPANIES WHICH HAVE HAD TO PAY LARGE DAMAGE SETTLEMENTS AND WHICH, AS A RESULT, NOW REFUSE TO VOLUNTEER. GOOD SAMARITAN LEGISLATION WILL ALLEVIATE THESE LIABILITY CONCERNS AND INCREASE THE WILLINGNESS OF ALL COMPANIES TO RESPOND AND THEREBY REDUCE RESPONSE TIME.

GOOD SAMARITAN PROTECTION ALSO FURTHERS THE FORMATION OF INDUSTRY MUTUAL ASSISTANCE GROUPS. MEMBERS OF SUCH GROUPS, FORMED AT THE STATE, REGIONAL OR LOCAL LEVEL, AGREE TO RESPOND TO INCIDENTS WHETHER OR NOT THEY SHIPPED, TRANSPORTED, OR WERE AT ALL CONNECTED WITH THE PRODUCT INVOLVED. EXAMPLES ARE: THE TEXAS MUTUAL ASSISTANCE IN TRANSPORTATION EMERGENCIES GROUP, A NETWORK OF CHEMICAL COMPANIES IN THAT STATE; THE HOUSTON AREA TRANSPORTATION SAFETY ASSOCIATION, CONSISTING OF TANK TRUCK CARRIERS; AND THE NATIONAL LP-GAS ASSOCIATION MUTUAL ASSISTANCE PROGRAM.

WITH THE PASSAGE OF GOOD SAMARITAN LAWS, IT IS HOPED THAT THERE WILL NEVER AGAIN BE A TRAGEDY OF THE MAGNITUDE THAT OCCURRED IN WAVERLY, TENNESSEE, ON FEBRUARY 24, 1978. IN THAT INCIDENT, A TRAIN DERAILMENT AND SUBSEQUENT TANK CAR EXPLOSION KILLED 16 PEOPLE, INJURED 45 OTHERS, AND CAUSED \$1.8 MILLION IN PROPERTY DAMAGE. IT HAS BEEN REPORTED THAT ONE OR MORE COMPANIES REFUSED TO RENDER ASSISTANCE AFTER THE DERAILMENT, BUT PRIOR TO THE EXPLOSION, BECAUSE OF FEARS OF POTENTIAL LIABILITY. WHEN A COMPANY DID AGREE TO ASSIST, TWO DAYS HAD ELAPSED, THE AMBIENT AIR TEMPERATURE

HAD INCREASED BY ABOUT 30 DEGREES, AND A TANK CAR WHICH HAD BEEN WEAKENED IN THE ORIGINAL ACCIDENT WAS READY TO RUPTURE. THESE FACTS PROMPTED THE TENNESSEE LEGISLATURE TO BE ONE OF THE FIRST TO ENACT GOOD SAMARITAN LEGISLATION.

WE URGE THIS COMMITTEE TO FAVORABLY CONSIDER HB 2855. WE WOULD HOPE THAT PASSAGE OF THIS BILL WOULD PREVENT A TRAGEDY SIMILAR TO THE ONE IN TENNESSEE FROM EVER HAPPENING IN KANSAS.

I WOULD POINT OUT THAT KANSAS IS THE SECOND LARGEST STORER OF PROPANE IN THE UNITED STATES, THIS MEANS THAT THE TRANSPORTATION OF LP-GASES BY RAILCAR, TRANSPORT, AND PIPELINE WOULD BE ONE OF THE HIGHEST GALLONAGE IN THE UNITED STATES.

Senate
Transportation Committee
March 28, 1984
Nancy E. Kantola, Exec. V.P.
Kansas Cooperative Council

Mr. Chairman, members of the Committee, thank you for this opportunity to speak in support of HB 2855.

The Kansas Co-op Council has as members the supply and marketing co-ops in Kansas which handle such products used by farmers as LP gas, petroleum and anhydrous ammonia.

The "handlers" of these products are trained in safety procedures as well as emergency procedures. Both Farmland Industries and their insurance companies provide training to local co-op employees so they will know how to respond in emergency situations.

That brings me to the point of HB 2855. I would support the testimony provided by Ken Johnson, and add that the same situation applies to anhydrous. I made some calls and found we enjoy a very low accident rate, and indeed have not had third party lawsuits in the last six years.

However, this bill if passed would certainly provide the knowledgeable people peace of mind when they respond to a call for help. The rural areas where these co-op employees live and work are not staffed with hazardous materials teams and utilize volunteer firemen, so they may be the only people competent to respond if an accident involving anhydrous ammonia should occur.

On behalf of the members of the Kansas Co-op Council, I urge your support for HB 2855.

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STATEMENT

By

KANSAS MOTOR CARRIERS ASSOCIATION

Concerning House Bill 2855 which would provide civil immunity to persons who voluntarily assist with a hazardous materials accident.

Presented to the Senate Transportation & Utilities Committee, Sen. Robert Talkington, Chairman; Statehouse, Topeka, Wednesday, March 28, 1984.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here this morning representing the 1,560 member-firms of the Association and the highway transportation industry.

Because of the potential dangers (i.e., explosions, fire, contamination, etc.) in the handling, storing and transporting of many chemical and petroleum products that are of a hazardous nature, emergency situations can arise where truck drivers, train crews, firemen, and other local emergency personnel at the scene of the accident are not qualified or equipped to act quickly and thus avoid very dangerous situations.

Our industry knows from experience, immediate assistance in an accident/spill situation often reduces the subsequent damages to property, the environment, the clean-up cost, and lowers the actual expense of the accident. We have been told of situations where experts, that easily could have helped out at an accident site, refused to respond because of fear of being involved in legal action.

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It should be clear that the purpose of House Bill 2855 is to encourage knowledgeable individuals and organizations voluntarily to lend expert advice and assistance in the event of accidental or threatened discharge of hazardous materials. House Bill 2855 also makes it clear that there is no change in the liability of those persons responsible for the accident involving the hazardous materials. To the extent that such parties are liable under current law, they would remain liable.

The Kansas Motor Carriers Association believes the amendments suggested by Rep. Leroy Fry need to be adopted. "Emergency" is not now defined in the bill. We do not know when the clock would start or who would start it for the 18 hours now included in subsection (d) of Section 1 of the bill. We strongly favor the original language of Section 2 as the bill was introduced. We ask your favorable consideration of this revision.

With these amendments, the Kansas Motor Carriers Association fully supports the passage of House Bill 2855. The bill would encourage prompt and effective clean-up of hazardous materials and thus ensure the greatest possible safety to the public.

We thank you for the opportunity to offer this testimony to the Committee today. I will be pleased to respond to any questions you may have.

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TESTIMONY ON HB 2855
By the Kansas Petroleum Council
For Senate Committee on Transportation and Utilities
3/28/84

Mr. Chairman and Members of the Committee, my name is Ross Martin and I represent the Kansas Petroleum Council. We are here to voice support for HB 2855.

Representative Fry's bill is important to the people of Kansas and it won't cost them one thin dime. What this bill does is untie the hands of skilled people throughout this state who can help prevent disasters.

Without the limited protection of this bill, people whose help is needed can be placed in jeopardy, if they volunteer to help contain hazardous materials accidents. The purpose of the bill is simply to relieve them of that fear -the fear of being routinely subjected to costly lawsuits because they chose to offer help. Of course, if any harm should result because of gross negligence, wanton or intentional misconduct, a person would still be liable for his acts. Immunity is not given to people who are paid for their services or who may have caused the discharge of hazardous materials.

Twenty-five states have recognized a need for this type of legislation by passing similar statutes. They include our sister states of Arkansas, Colorado, Oklahoma, and most recently, Nebraska.

Again, the bill's purpose is to encourage skilled people to respond with help and special equipment in order to prevent harm to others and to property when accidents occur.

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Unfortunately, HB 2855 was amended in Committee to tie immunity to an undefined "emergency". We object to that amendment. It limits the bill's effectiveness by confusing the conditions under which immunity might apply. We also believe the 18-hour limit on immunity is arbitrary, shortsighted and self-defeating because it can take more time to contain some accidents.

This bill was patterned after model legislation and the original language in Sec 2(a) should be restored. If the bill is so amended, we believe you will have produced a timely and appropriate response to the problem of accidents involving hazardous materials.

Thank you. I will be happy to try to answer any questions.