

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~xxx~~/p.m. on March 28, 1985 in room 519-S of the Capitol.

All members were present except: Representative Smith - excused.

Committee staff present:

Hank Avila, Legislative Research Department
Fred Carman, Office of the Revisor of Statutes
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

None

The meeting was called to order by Chairman Rex Crowell, and the first order of business was Committee discussion and action on SB-181 concerning tunneling, excavating and discharging of explosives.

Representative Spaniol explained findings of the subcommittee and distributed a balloon on SB-181. (See Attachment 1)

A motion was made by Representative Spaniol to recommend SB-181 for an interim study. The motion was seconded by Representative Patrick. The motion passed.

The next bill taken up for Committee discussion and action was SB-276 concerning exemptions from axle weight limitations of vehicles used exclusively for refuse or solid waste disposal.

A motion was made by Representative Dillon that SB-276 be tabled. The motion was seconded by Representative Spaniol. The motion passed.

The next bill taken up was SB-188 concerning exempting agricultural lime haulers from federal bridge weight limitations.

A motion was made by Representative Dillon to table SB-188. The motion was seconded by Representative Adam.

Representative Ott made a substitute motion that SB-188 be recommended favorable for passage. The motion was seconded by Representative Harper. The motion failed 10-7 on a division.

A vote was taken on the original motion to table SB-188. Motion passed.

The next bill taken up for Committee discussion and action was SB-118 concerning automobile warranties. Representative Knopp reported on the subcommittee study and distributed a balloon on SB-118. (See Attachment 2)

A motion was made by Representative Justice to adopt the suggested subcommittee amendments. The motion was seconded by Representative Dillon. Motion passed.

A motion was made by Representative Moomaw to include the first stage manufacturer. The motion was seconded by Representative Lacey.

A substitute motion was made by Representative Knopp to add the language "and does not include the customized parts of motor vehicles which have been modified by second stage manufacturers, first stage converters, or second stage converters as defined in Article 8 of

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xxx~~ p.m. on March 28, 1985.

K.S.A. 8-2401". The motion was seconded by Representative Lacey.
Motion passed.

A motion was made by Representative Dillon that SB-118 be recommended
as favorable for passage. The motion was seconded by Representative
Sutter. Motion passed.

The meeting was adjourned at 2:30 p.m.


Rex Crowell, Chairman

SENATE BILL No. 181

By Committee on Transportation and Utilities

2-7

→ STATE OF Washington
& Michigan

Attachment 1

0017 AN ACT concerning tunneling, excavating and discharging of
0018 explosives; notice; damages; penalties.

0019 Be it enacted by the Legislature of the State of Kansas:

0020 Section 1. As used in this act:

0021 (a) "Damage" means any impact or contact with an under-
0022 ground facility, its appurtenances or its protective coating, or
0023 weakening of the support for the facility or protective housing,
0024 which requires repair;

0025 (b) "Emergency" means any condition constituting a clear
0026 and present danger to life or property, or a customer service
0027 outage;

0028 (c) "Excavation" means any operation in which earth, rock,
0029 or other material below ground, is moved or otherwise displaced
0030 by any means, ~~but not including the tilling of soil for agricultural~~
0031 ~~purposes or for road and ditch maintenance that does not change~~
0032 the original road grade or ditch flowline;

0033 (d) "Facility" means any underground line, system or struc-
0034 ture used for producing, gathering, storing, conveying, transmit-
0035 ting or distributing communication, electricity, gas, petroleum,
0036 petroleum products, hazardous liquids, water, steam, sewage, or
0037 any other similar commodities;

0038 (e) "Marking" means the use of stakes, paint or other clearly
0039 identifiable materials to show the field location of underground
0040 facilities, in accordance with the current color code standard of
0041 the American public work association;

0042 (f) "Operator" means any person who owns or operates an
0043 underground facility, except for any person who is the owner of
0044 real property, wherein are located underground facilities for the
0045 purpose of furnishing services or materials only to such person or

agricultural activity, except that performed by contractor,
is specifically excluded from this act as is the

railroad,

railroad grade,

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0016 occupants of such property;

0047 (g) "Person" means an individual, partnership, corporation,
0048 association, franchise holder, state, city, county or any govern-
0049 mental subdivision or instrumentality of a state and its employ-
0050 ees, agents or legal representatives; and

0051 (h) "Working day" means every day, except Saturday, Sun-
0052 day, or a legal local, state or federal holiday.

0053 Sec. 2. A person shall not excavate, tunnel or discharge ex-
0054 plosives in a street, highway or public place, a private or public
0055 easement or near the location of an underground facility without
0056 having first ascertained, in the manner prescribed in this act, the
0057 location of all underground facilities in the proposed area of
0058 excavation, tunneling or discharging of explosives.

0059 Sec. 3. A person responsible for excavating, tunneling or
0060 discharging explosives in a street, highway or ~~other~~ public place,
0061 shall serve notice of intent to excavate, tunnel or discharge
0062 explosives at least two full working days, but not more than 10
0063 working days, before commencing the excavating, tunneling or
0064 discharging of explosives, on operators having underground fa-
0065 ilities located in the proposed area of excavation, tunneling or
0066 discharging of explosives.

0067 The notice of intent shall contain the name, address and
0068 telephone number of the person filing the notice of intent, the
0069 name of the person performing the excavation, tunneling or
0070 discharging of explosives, the date, type and ~~location~~ of the
0071 ~~excavation, tunneling or discharging of explosives.~~

0072 Sec. 4. In areas where two or more operators of underground
0073 facilities have formed an association providing for mutual receipt
0074 of notification of ~~construction~~ activities, notification to the asso-
0075 ciation may be effected as provided by ~~this act~~ or by telephone
0076 call/providing the same information as required by this act by
0077 ~~the person responsible for excavating, tunneling or discharging~~
0078 ~~explosives. If notification is made by telephone, an adequate~~
0079 ~~record shall be maintained by the association to document com-~~
0080 ~~pliance with the requirements of this act.~~

0081 ~~Sec. 5. An operator served with the notice above shall, not~~
0082 ~~less than one working day in advance of the proposed construc-~~

--- a private or public easement or near the location of an underground facility

(-) known to or unsuspected of

and specific location if within the city limits and by quarter (1/4) section in all other areas within the state.

excavation in Sec. 3 of this to the association's established office, by the person responsible for the excavation activities Sec. 3 of this

- 40 acce

0083 tion, unless otherwise agreed between the parties, inform the
 0084 person of the approximate location of the underground facilities
 0085 owned and operated in the area of excavation, tunneling or
 0086 discharging of explosives, in a manner as to enable the person to
 0087 employ hand-dug test holes or other means of establishing the
 0088 precise location of the underground facilities in advance of
 0089 construction or excavation. If the precise location of the under-
 0090 ground facilities cannot be established, the person shall then
 0091 notify the operator, who shall provide further assistance needed
 0092 to determine the precise location of the underground facility in
 0093 advance of the proposed excavation, tunneling or discharging of
 0094 explosives.

0095 Sec. 6. In the case of emergency involving danger to life,
 0096 health or property or which requires immediate correction in
 0097 order to continue the operation of a major industrial plant, or to
 0098 assure the continuity of public utility service, excavation, main-
 0099 tenance or repairs may be made without using explosives if
 0100 notice and advice thereof, in writing or otherwise, is given to the
 0101 operator or association as soon as reasonably possible. *After excavation is begun*

0102 Sec. 7. This act shall not be construed to authorize, affect or
 0103 impair local ordinances, charters or other provisions of law
 0104 ~~requiring permits to be obtained before excavating or tunneling~~ concerning
 0105 in a public street or highway. ~~A permit issued by a public agency~~ or private or public easement.
 0106 ~~shall not be deemed to relieve a person from the responsibility~~
 0107 ~~for complying with the provisions of this act.~~

0108 Sec. 8. Upon receiving the information provided for in sec-
 0109 tions 4 or 5, a person excavating, tunneling or discharging ex-
 0110 plosives shall exercise reasonable care when working in close
 0111 proximity to any underground facilities. If the facilities are to be
 0112 exposed, or are likely to be exposed, only hand digging shall be
 0113 employed in such circumstances and such support as may be
 0114 reasonably necessary for protection of the facilities shall be
 0115 provided in and near the construction area.

0116 Sec. 9. When any contact with or damage to any pipe, cable,
 0117 or its protective coating, or any other underground facility of an
 0118 operator occurs, the operator shall be notified immediately by
 0119 the person responsible for the operations causing the damage.

New Sec. 5. An operator served with notice shall, in advance of the proposed excavation, unless otherwise agreed between the parties, by marking, flagging, or by other acceptable methods, inform the person responsible for the excavation of the approximate location of the underground facilities owned and operated in the area of planned excavation. Such marking shall be done in a manner as to reasonably enable the person responsible for the excavation to employ hand-dug test holes or other means of establishing the precise location of the underground facilities in advance of the excavation. If the precise location of the underground facilities cannot be established, the person responsible for the excavation shall then notify the operator, who shall ^{immediately} promptly provide further assistance needed to determine the precise location of the underground facility in advance of the proposed excavation activity.

0120 Upon receiving the notice, the operator shall dispatch personnel
 0121 to the location as soon as possible to effect temporary or perma-
 0122 nent repairs of the damage. If a serious electrical short is occur-
 0123 ring, or if dangerous fluids or gases are escaping from a broken
 0124 line, the person responsible for the operations causing the dam-
 0125 age shall evacuate the immediate area while awaiting the arrival
 0126 of the operator personnel.

0127 Sec. 10. In a civil action in a court of this state when it is
 0128 shown by competent evidence that damage to the underground
 0129 facilities of an operator resulted from excavating, tunneling or
 0130 discharging of explosives as described in section 2, and that the
 0131 person responsible for giving the notice of intent to excavate,
 0132 tunnel or discharge explosives failed to give the notice, ~~or the~~
 0133 ~~person did not employ hand digging or failed to provide support,~~
 0134 ~~the person shall be deemed prima facie guilty of negligence.~~

0135 Sec. 11. A person who damages the facilities of an operator
 0136 on more than three occasions on any one construction contract
 0137 location because of such person's failure to comply with any of
 0138 the provisions of this act may be enjoined from engaging in any
 0139 further excavating, tunneling or discharging of explosives within
 0140 the state, except under such terms and conditions as the court
 0141 may prescribe to ensure the safety of the public. A court may
 0142 prescribe such penalties as it deems necessary or appropriate for
 0143 violation of the injunctive order up to a maximum of \$1,000 per
 0144 violation. All penalties recovered in such actions shall be de-
 0145 posited in the state general fund.

0146 Sec. 12. Willful violation of this act is an unclassified mis-
 0147 demeanor punishable by a fine of not more than \$1,000 for each
 0148 offense. Any such penalty is in addition to any civil liability. A
 0149 person who willfully removes or otherwise destroys the stakes or
 0150 other physical markings used by an operator to mark the approx-
 0151 imate location of underground facilities is guilty of a Class A
 0152 misdemeanor.

0153 Sec. 13. If any provisions of this act or the application
 0154 thereof to any person or circumstance is held invalid, the re-
 0155 mainder of the act and the application of such provision to other
 0156 persons or circumstances shall not be affected thereby.

No a rebuttable presumption of negligence shall arise

\$100

except for necessary construction activity or upon
 completion of construction

SENATE BILL No. 118

By Committee on Transportation and Utilities

1-30

0018 AN ACT concerning motor vehicles; automobile warranties;
0019 commonly called the lemon law.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. (a) As used in this act:

0022 (1) "Consumer" means the purchaser, other than for purposes
0023 of resale, of a motor vehicle, any person to whom such motor
0024 vehicle is transferred during the duration of ~~an express~~ warranty
0025 applicable to such motor vehicle and any other person entitled
0026 by the terms of such warranty to enforce the obligations of the
0027 warranty; and

any

0028 (2) "motor vehicle" means a motor vehicle ~~designed to carry~~
0029 ~~passengers~~ which is sold in this state.

new

and which is registered for a gross weight of 12,000 pounds or less

0030 (b) If a new motor vehicle does not conform to all applicable
0031 ~~express~~ warranties, and the consumer reports the nonconformity
0032 to the manufacturer, its agent or its authorized dealer during the
0033 term of such ~~express~~ [any] warranties or during the period of one
0034 year following the date of original delivery of the motor vehicle
0035 to a consumer, whichever is the earlier date, the manufacturer,
0036 its agent or its authorized dealer shall make such repairs as are
0037 necessary to conform the vehicle to such ~~express~~ warranties,
0038 notwithstanding the fact that such repairs are made after the
0039 expiration of [any] such term or such one-year period.

0040 (c) If the manufacturer, or its agents or authorized dealers,
0041 are unable to conform the motor vehicle to any applicable ~~ex-~~
0042 ~~press~~ warranty ~~by repairing or correcting any defect or condition~~
0043 ~~which substantially impairs the use and value of the motor~~
0044 ~~vehicle to the consumer~~ after a reasonable number of attempts,
0045 the manufacturer shall replace the motor vehicle with a compa-

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0046 rable motor vehicle under warranty or accept return of the
0047 vehicle from the consumer and refund to the consumer the full
0048 purchase price including all collateral charges, less a reasonable
0049 allowance for the consumer's use of the vehicle. Refunds shall be
0050 made to the consumer, and lienholder if any, as their interests
0051 may appear. A reasonable allowance for use shall be that amount
0052 directly attributable to use by the consumer and any previous
0053 consumer prior to the first report of the nonconformity to the
0054 manufacturer, agent or dealer and during any subsequent period
0055 when the vehicle is not out of service by reason of repair. It shall
0056 be an affirmative defense to any claim under this act (1) that an
0057 alleged nonconformity does not substantially impair such use
0058 and value, or (2) that a nonconformity is the result of abuse,
0059 neglect or unauthorized modifications or alterations of a motor
0060 vehicle by a consumer.

as calculated from the most recent edition of the United States
department of transportation's cost of owning and operating
automobiles and vans

0061 (d) If the manufacturer receives actual notice of the noncon-
0062 formity, it shall be presumed that a reasonable number of at-
0063 tempts have been undertaken to conform a motor vehicle to the
0064 applicable ~~express~~ warranties, if (1) the same nonconformity has
0065 been subject to repair four or more times by the manufacturer or
0066 its agents or authorized dealers within the ~~express warranty~~ term
0067 *[of any warranty]* or during the period of one year following the
0068 date of original delivery of the motor vehicle to a consumer,
0069 whichever is the earlier date, but such nonconformity continues
0070 to exist, ~~or~~ (2) the vehicle is out of service by reason of repair for a
0071 cumulative total of 30 or more calendar days during such term or
0072 period, whichever is the earlier date. The term of ~~an express~~
0073 *[any]* warranty, such one-year period and such thirty-day period
0074 shall be extended by any period of time during which repair
0075 services are not available to the consumer because of war,
0076 invasion, strike, fire, flood or other natural disaster.

which substantially impairs the use and value of the motor vehicle
to the consumer

0077 (e) Nothing in this act shall in any way limit the rights or
0078 remedies which are otherwise available to a consumer under any
0079 other law.

or (3) there have been 10 or more attempts to repair any
nonconformities

0080 ~~(f)~~ *[(e)]* If a manufacturer has established an informal dispute
0081 settlement procedure which complies in all respects with the
0082 provisions of title 16, code of federal regulations, part 703, as

0083 from time to time amended, the provisions of subsection (c)
0084 concerning refunds or replacement shall not apply to any con-
0085 sumer who has not first resorted to such procedure.

0086 *[Sec. 2. Nothing in this act shall in any way limit or affect*
0087 *the rights or remedies which are otherwise available to a con-*
0088 *sumer under the uniform consumer credit code, or to any person*
0089 *under the uniform commercial code, or to any person under any*
0090 *other law statutory or otherwise.]*

0091 Sec. 2 [3]. This act shall take effect and be in force from and
0092 after its publication in the statute book.