

Approved 3/17/87
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m. ~~xxx~~ on March 10, 1987 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Sen. Norma Daniels
Col. Mahlon G. Weed, Division of Emergency Preparedness
Tom Whitaker, Kansas Motor Carriers Association
Dennis Murphy, Department of Health and Environment
Mary Wettig, Assistant General Counsel, KCC

HEARING ON S.B. 347 - Transportation of hazardous material.

Sen. Norma Daniels said this is a very important matter that the Legislature needs to address. This is a timely subject while the state is talking about a compact regarding radioactive waste material. This bill was introduced last year and now we have to make tough policy decisions about transporting this type of material. Kansas has been lucky that there has been no loss of life although there have been spills. There are many shipments moving across the U.S. every day and 5 to 15% of the trucks are carrying hazardous materials. There are other methods of transporting but this bill deals only with motor transportation. This bill is necessary to help prevent accidents. Sen. Daniels explained the bill by going through each section and said the "peanut" of the bill was in New Section 5 which states that the commission in consultation with the secretary of the department of health and environment, the secretary of the state department of transportation, the superintendent of the highway patrol, the state fire marshal, secretary of the state board of agriculture and the adjutant general shall adopt rules and regulations for the safe transportation of hazardous materials over public highways of the state. She said the crossed out lines in 208 thru 219 should probably be left in.

Col. Mahlon Weed, Director of the Division of Emergency Preparedness said they could not support Section 12 as written. A copy of his statement is attached. (Att. 1).

Tom Whitaker, Kansas Motor Carriers Association, said they have some problems with the bill regarding penalties and the definition of the word "operator". A copy of his statement is attached. (Att. 2).

Dennis Murphy, Department of Health and Environment, said they endorse the efforts of this bill. They are directly involved in response to spills and licensing of transporters.

Mary Wettig, Assistant General Counsel, KCC, said common carriers are exempt operating within the corporate limits of the city or three miles thereof so transportation within the city limits is probably where regulation is most needed. She had several recommendations for the bill. A copy of her statement is attached. (Att. 3).

The Chairman appointed a sub-committee to study S.B. 347 and to report back to the full committee. The Chairman is Sen. Doyen with Sen. Bond and Sen. Francisco as members.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on March 10, 1987

A motion was made by Sen. Hayden and was seconded by Sen. Thiessen to approve the Minutes of March 5 and 6, 1987. Motion carried.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date ~~3-8~~ - 3-10-87 Place 254-E Time 9⁰⁰

GUEST LIST

| NAME | ADDRESS | ORGANIZATION |
|------------------|------------|---------------------------|
| M. G. WEED | TOPEKA | Ks Dir of Emer. Prep. |
| Leon H. Mannell | Topeka | Ks Div. of Emer Prep. |
| Mary Wehig | KCC Topeka | KCC |
| Dennis Murphy | Topeka | KDHE |
| John E. Coslett | Topeka | State Fire Marshal Office |
| Ed C Redmon | Topeka | State Fire Marshal |
| Maura Dimil | | State Senator |
| Jack Tume | Topeka | KCC |
| Bob Giffen | TOPEKA | KHP |
| William Buchanan | Topeka | Research |
| Jay D. Cole | Topeka | The Adj. Gen. Dept |
| Alan Steppat | Topeka | Pete. McAuley + Assoc. |
| Tom Whitaker | Topeka | Ks Motor Carriers Assn |
| Bruce Graham | Topeka | Ks Motor Carriers |
| Kevin Davis | " | League of Ks Municip. |
| Bill Green | Topeka | KCC |

Testimony Before the Senate Transportation
and Utilities Committee

Senate Bill 347

I am Mahlon G. Weed, Deputy Director of the Division of Emergency Preparedness of the Adjutant General's Department. I wish to thank the Committee for allowing us to testify on Senate Bill 347, an act pertaining to motor carrier transportation of hazardous materials.

As the Bill is written, the Division of Emergency Preparedness can not support Section 12 as it appears on pages 5 and 6. Section 12 contains the missions of the Division of Emergency Preparedness under Article 9 of Chapter 48 Kansas Statutes Annotated as it pertains to preparing for, responding to, and recovering from all types of disaster emergencies that may occur in the State of Kansas. Sub-paragraphs (a) thru (j) of Section 12 are direct quotes from KSA 48-928 and should remain. Sub-paragraph (k), (k1), and (k2), lines 0206 thru 0210, of SB 347 is our basis for coordinating response to hazardous material when it is being transported around the State and there is an accident. By deleting our ability to coordinate response to these spills and the resultant clean-up there will not be any action to such spills beyond that which can be done by local government. The deletion of this mission will also affect our ability to comply with what we believe is the real intent of this bill which is to notify the Corporation Committee of certain hazardous material releases. In addition, sub-paragraph (k), (k1), and (k2) form the real reason for the mission contained in sub-paragraph (l). Therefore, we request that sub-paragraphs (k), (k1), and (k2) be retained as originally written in KSA 48-928.

We are in agreement with sub-paragraph (l), lines 0211 thru 0215 as contained in this bill.

Our greatest objection to this bill is the deletion of sub-paragraph (m) of KSA 48-928 as this bill calls for in lines 0216 thru 0219. This sub paragraph allows requesting disaster aid from the Federal Government or requesting assistance from the Red Cross, Salvation Army, or private industry when they can help the citizens of the State during a disaster. With the deletion of this sub paragraph we will be unable to request a Presidential Major Disaster Declaration. It is thru this means that we are now administering some \$4 million dollars in aid from the Federal Emergency Management Agency for the flooding disaster in Southeast Kansas occurring just last October. Also, if sub-paragraph (m) is deleted, we would no longer be able to coordinate with the Federal Emergency Management Agency from whom we receive 50% of our yearly funding as well as yearly funding for 55 counties for emergency preparedness activities. Thru

the deletion of sub-paragraph (m) we would not be able to request disaster assistance for crop losses from the Farmers Home Administration or disaster assistance from the Small Business Administration for homes and businesses ravaged by tornadoes, floods, hail or other types of disasters. We request that sub-paragraph (m) be reinstated as originally written. We do not believe the intent of the deletion was to prevent disaster assistance, but we were never consulted on these changes as they appear in this bill.

The wording that has been added as the new sub-paragraph (m) should now be sub-paragraph (n) of KSA 48-928. We do not object to adding this as a new mission and will be glad to forward this information to the Corporation Commission.

Again, thank you for hearing this testimony. Are there any questions?

STATEMENT

by the

KANSAS MOTOR CARRIERS ASSOCIATION

Concerning Senate Bill No. 347 relating to
the transportation of hazardous materials
and the motor carrier transportation of
hazardous materials act.

Presented to the Senate Transportation and
Utilities Committee, Sen. Bill Morris,
Chairman; Statehouse, Topeka, Tuesday,
March 10, 1987.

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 today representing the members of our Association and the highway transportation industry.

We have visited with Senator Norma Daniels who requested this bill and fully understand her sincerity in addressing many of the issues reflected in Senate Bill 347.

We agree strongly with the language in Section 5 which expresses the need for affected state agencies to coordinate rules and regulations for the safe transportation of hazardous materials and requires such rules and regulations to follow the standards contained in the rules and regulations of the U.S. department of transportation.

The Corporation Commission currently has adopted the federal rules and regulations cited in section 5.

ATT. 2
T&U 3/10/87

The Kansas Motor Carriers Association continues to support legislation at the state level relating to the transportation of hazardous materials so long as such legislation is consistent with federal guidelines adopted by the U.S. Secretary of Transportation concerning such transportation.

We do have several questions concerning the provisions of Senate Bill 347.

The thrust of the bill appears to give the Corporation Commission increased responsibilities for the transportation of hazardous materials, hazardous substances and hazardous wastes.

The complexities of assigning such responsibilities expand the Commission's jurisdiction into areas which currently are exempt from the Commission's authority under other sections of Kansas statutes.

It is unclear how the penalties proposed in Senate Bill 347 would apply.

Section 10 would penalize "any operator" of a motor vehicle violating the provisions of sections 4,5,6 or 7 to be guilty of a misdemeanor and upon conviction to be punished by a fine not to exceed \$500.

The word "operator" is not defined and could relate to the owner of the vehicle, the actual driver of the vehicle or a carrier if the term is construed in its broadest sense.

Subsection (b) of Section 10 provides that any "carrier" violating the provisions of sections 4,5,6 or 7, or any shipper violating the provisions of section 5 shall be cited to appear before the Commission and, after notice and hearing, the Commission shall have the authority to inflict another set of truly punitive penalties.

The dollar fines of not less than \$100 nor more than \$1,000 for each offense are cumulative not only by the number of violations which could occur but by the number of days such violations continued.

For example, I was instructed in the Hazardous Materials Compliance and Enforcement Course offered by the U.S. Department of Transportation that a total of 27 separate violations could be found on a shipping paper alone.

Shippers as well as carriers would be subject to the fines proposed in Subsection (b) of Section 10.

The bill also includes the current language from K.S.A. 66-1,129 which provides:

" . . .The commission shall adopt rules and regulations necessary to carry out the provisions of this act. The commission may, at any time, for good cause, suspend, and, upon at least five days' notice to the grantee of any certificate and an opportunity to be heard, revoke or amend any certificate. . . ."

The chapter 66 language is the Commission's authority to carry out the provisions of the regulatory act and applies to all carriers under the Commission's jurisdiction regardless of the commodities transported.

As we understand the provisions of Senate Bill 347, there are three sets of penalties which could apply.

There are other questions in other sections of the bill which could be addressed.

What is a reportable accident?

The railroad grade crossing provisions included in section 11 may represent a greater hazard than existing law.

The driver license language proposed in the bill will have to be addressed when Kansas coordinates its statutes with the requirements of the federal Motor Carrier Safety Act of 1986. We respectfully request such changes be considered at that time.

We recognize the intent of Senate Bill 347. We appreciate the work that has been done as of this date. We sincerely believe that the proposal requires a great deal of additional research and work. Our industry would be pleased to offer every appropriate assistance in making such revisions at a proper time.

We respectfully request that the bill be held in this Committee for this session and that we be permitted to work with the affected state agencies and with Senator Daniels, the author of the legislation, to produce a workable proposal for your consideration in 1988.

We thank you for the opportunity to offer these comments and will be pleased to respond to any questions you may have.

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TESTIMONY RE: S.B. 347

TRANSPORTATION OF HAZARDOUS MATERIALS,
WASTES, SUBSTANCES

KANSAS CORPORATION COMMISSION

Mary Wettig, Assistant General Counsel

What KCC Currently Regulates

Currently the KCC has regulations (K.A.R. 82-1-3 and 82-1-20) which adopt the federal DOT safety requirements regarding transportation of hazardous materials, qualification of drivers, and specifications for vehicle and cargo tank, etc. However, not all motor carriers of hazardous materials are regulated by the KCC. K.S.A. 66-1,109 set forth several exemptions. Specifically, any common carrier operating within the corporate limits of the city or three (3) miles thereof and any private carrier operating within 25 miles of its domicile are exempt from KCC regulations including safety. Ironically, within the city limit is probably where regulation of the transportation of hazardous materials (at least as to safety) is most needed.

Effect of Bill of KCC

1. The KCC in consultation with KDOT, KDHE, KHP, will adopt rules and regulations for the safe transportation of hazardous materials. The regulations shall be applicable to all carriers as well as shippers. The regulations should include proper packaging, labeling, placarding of vehicles, driver qualifications etc. The KCC will use federal regulations as guidelines. (New Section 5).

2. The bill expands the Commission's jurisdiction relating to safety to: 1) common motor carriers transporting hazardous materials wholly within the City limits and 3 miles thereof and private carriers operating 25 miles within their domicile, 2) persons shipping hazardous materials.

3. The KCC investigators along with the highway patrol, sheriff or other peace officers shall have the right to enforce the Act. The KCC investigators are currently qualified to make such inspections and regularly do so on carriers regulated by Chapter 66. This act would broaden investigators authority by allowing them to make inspections of carriers operating solely within city limits. (Section 9)

4. The KCC will in essence become the coordinating and supervising state agency in handling hazardous materials transportation. The division of emergency preparedness will notify the KCC of accidents of a serious nature. The KCC will be the repository of such information. (Sec. 10[m]).

5. Penalties for violation of Act.

Section 9 of this bill sets out 4 types of penalties.

1. Criminal penalties - This penalty consists of conviction of misdemeanor and \$500 fine for operator of vehicles. It is not imposed by KCC.

2. Fines ranging from \$100 to \$1000 to carrier or shipper. Imposed by KCC after notice and hearing.

3. Suspension and/or prohibition of further transportation by carrier. Imposed by KCC after notice and hearing.

4. Suspension and/or prohibition of further offering of hazardous materials by shipper to carrier. Imposed by KCC after notice and hearing.

The KCC has similar type penalties for the motor carriers it currently regulates (K.S.A. 66-1,130, 66-138, 66-177).

The remainder of the bill generally gives the KCC the authority to adopt rules and regulations regarding safety. Several existing statutes were amended to bring them in conformity with federal law. S.B. 347 is a comprehensive bill which incorporates several existing statutes and puts all legislation dealing with transportation of hazardous materials in one chapter instead of scattered throughout the K.S.A.'s.

The KCC wishes to emphasize that it does not object to the expansion of its jurisdiction relating to safety matters, but it does not wish to expand its jurisdiction as to entry standards, rates, filing annual reports, registering equipment etc.

KCC RECOMMENDATIONS

1. New Section 10(b), change citation language from "shall" to "may". That way, the Commission would have some discretion as to which carriers will be cited to appear for hearing, depending on the severity of the violation.

2. Delete Section 13 from this bill which proposes amendments to K.S.A. 66-1,129 while Section 14 then repeals 66-1,129. K.S.A. 66-1,129 is the basis for several KCC MC safety regulations which have nothing to do with this bill. To repeal K.S.A. 66-1,129 would eliminate statutory authority for those regulations. S.B. 347's amendment to K.S.A. 66-1,129 is basically to change the driving age of certain carriers to 21. H.B. 2522 does the same thing.

BRIEF OVERVIEW OF S.B. 347

New Section 4.

Expands the Commission's jurisdiction to include shippers and transporters of hazardous materials within a city, within three miles of a city's limits and private carriers who operate up to 25 miles of a city's limits.

New Section 7.

The 21 years of age is a new requirement for all persons driving vehicles transporting hazardous materials. Currently any person transporting hazardous materials intrastate must be 18; interstate carriers must be 21.

Section 9.

Jurisdiction of Commission has been expanded by Section 4. The special investigators of the Commission will, therefore, have jurisdiction over motor carriers and vehicles within a city, up to three miles of a city's limits and for private carriers who operate up to 25 miles of a city's limits.

Section 10.

Expands the Commission's punitive authority to cite, fine and prohibit a person from shipping hazardous materials as well as those transporting the commodity. Maximum fine can be \$1,000 with each day of failing to comply treated as a separate violation. Criminal sanctions are prosecuted by district attorney or county attorney.

Section 11.

Amendment would eliminate one of the situations in which a transporter of hazardous materials would not have to stop at a rail grade crossing. This amendment conforms to federal standards. (See HB 2143).

Section 12.

Requires the Commission be notified by Emergency Preparedness Division of hazardous materials accidents involving a release, only if vehicle under the regulations was required to be placarded.

Section 13.

Requires intrastate common and contract carriers to use drivers age 21 while engaged in interstate commerce if vehicle has a registered gross weight. This amendment conforms to federal standards. (See HB 2522).