

Approved March 1, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~xxx~~ p.m. on February 22, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson, Sebelius and Shriver, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Harold Guldner
Ann Smith, Mesa Limited Partnership
Tom Taylor, KPL Gas Service Company

HEARINGS ON H.B. 2193 - Water pipelines for irrigation; easement required

H..B. 2194 - Natural gas pipelines; easement required

Representative Harold Guldner testified he introduced these bills at the request of a constituent who had a neighbor who put a gas line into his water well and ran irrigation water pipelines from his well over the other man's property without permission. Since he has received numerous complaints like this over the past eight years, something should be done before trespass suits have to be filed, see Attachment I.

Ann Smith, Mesa Limited Partnership, said she was appearing on behalf of Ronald R. Hein, Legislative Counsel for Mesa Limited Partnership. She testified Mesa Limited Partnership could not support H.B. 2194 the way it is drafted. If the bill was amended to exclude pipelines which are laid by the producers such as Mesa pursuant to authority granted either by easements or by contractual rights given to Mesa, they would have no objection to the bill, see Attachment II.

Tom Taylor, K.P.L. Gas Service Company testified in opposition to H.B. 2194 as it is presently drafted. He submitted an amendment which would exempt natural gas public utilities as defined by K.S.A. 66-104, see Attachment III.

The hearings on H.B. 2193 and H.B. 2194 were closed.

Representative Solbach made a conceptual motion to give someone the right to collect double damages and allow the court to award attorney fees in cases where someone unlawfully installs a pipeline or structure on another person's property if they refuse to remove such unlawful structure and pay actual damages within a 30 day demand to do so.

The motion failed for lack of a second.

Representative Solbach moved conceptually to amend the bill to provide that a person who has a structure trespassing on another person's land unlawfully has 30 days after written notice to remove the pipeline or structure. If not removed, action could be filed to recover double actual damages and the court could award attorney fees. Representative Buehler seconded the motion. The motion failed.

The Committee discussed that the bills do not change current common law.

Representative Douville moved to table H.B. 2193 and H.B. 2194. Representative Roy seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~XX~~/p.m. on February 22, 1989

CONSIDERATION OF H.B. 2123 - Limiting civil liability of athletic officials

Representative Buehler explained his proposed amendments to H.B. 2123 as suggested by the Kansas Bar Association, see Attachment IV.

Staff distributed to the Committee information of states that have multiple defendant comparative fault systems, see Attachment V.

Representative Buehler moved to amend H.B. 2123 by adopting the proposed amendments of the Kansas Bar Association. Representative Douville seconded the motion. The motion passed.

Representative Solbach moved to table H.B. 2123. Representative Roy seconded the motion. The motion failed.

Representative Buehler moved to report H.B. 2123, as amended, favorably for passage. Representative Lawrence seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:45 p.m. The next meeting will be Thursday, February 23, 1989 at 3:30 p.m. in room 313-S.

STATE OF KANSAS

HAROLD GULDNER
REPRESENTATIVE, 122ND DISTRICT
GREELEY, HAMILTON, KEARNY, SCOTT,
WICHITA COUNTIES
P. O. BOX 648
SYRACUSE, KANSAS 67878-0648



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
ENERGY AND NATURAL RESOURCES
PENSIONS, INVESTMENTS AND
BENEFITS

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE ON

HOUSE BILL 2193 and 2194

BY REPRESENTATIVE HAROLD GULDNER

FEBRUARY 22, 1989

I introduced HB 2193 and 2194 at the request of a constituent of mine that had a neighbor who put a gas line into his water well and ran irrigation water pipelines from his well over the other man's property without permission.

This makes quite a number of complaints about this that I have had over the past eight years, so I think perhaps something should be done to help stop the problem before trespass suits have to be filed.

*House Judiciary
2/22/89
Attachment I*

TESTIMONY TO HOUSE JUDICIARY COMMITTEE
ON BEHALF OF MESA LIMITED PARTNERSHIP
PRESENTED BY RONALD R. HEIN
FEBRUARY 22, 1989

Mr. Chairman, members of the committee:

My name is Ron Hein and I am legislative counsel for Mesa Limited Partnership, the largest independent producer of domestic oil and gas in the United States. Almost half of Mesa's natural gas reserves are located in the Hugoton field of Southwest Kansas.

As I understand the sponsor's intent behind this bill, it is not to require legal easements to be prepared, executed, and filed of record in situations where there are existing easements or existing contractual rights by virtue of oil and gas leases or any other legal documents which, under the common law, permit pipelines to be installed. I understand that his intent is to prohibit those persons who do not have any such common law authority to be on the property.

We cannot support HB 2194 in the way that it is drafted, but if it were amended to exclude pipelines which are laid by producers such as Mesa pursuant to authority granted either by easements or by contractual rights given to Mesa, we would have no objection to the bill. We would be happy to attempt to draw language that would accomplish this exemption, or, if the committee desires, we would offer to make our legal staff available to work with the revisor's office on drawing language that is legally sufficient to insure that no common law rights to ingress or egress or common law rights to lay pipeline to producing wells be jeopardized in any way by passage of this bill.

Thank you very much for permitting me to testify, and I would be happy to yield to any questions.

House Judiciary
2/22/89
Attachment II

HOUSE BILL No. 2194

By Representative Guldner

(By Request)

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AN ACT concerning natural gas; relating to the installation of natural gas pipelines.

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

Section 1. No natural gas pipelines shall be installed on property belonging to another person without first obtaining an easement from the owner of such property.

~~Sec. 2.~~ This act shall take effect and be in force from and after its publication in the statute book.

Sec. 2. This act shall not apply to natural gas public utilities as defined by K.S.A. 66-104.

Sec. 3.

*House Judiciary
2/22/89
Attachment III*

HOUSE BILL No. 2123

By Representatives Buehler, Amos, Borum, Bowden, Cates, Crumbaker, Douville, Eckert, Graeber, Harder, King, Lawrence, Long, Mead, Pottorff, Roe, Roenbaugh, Scott, Sebelius, Shallenburger, Smith, Walker, Weimer and Wilbert

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House Judiciary
2/22/89
Attachment IV

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AN ACT concerning civil procedure; limiting the civil liability of athletic officials during the officiating at amateur athletic events.

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

Section 1. ~~An athletic official shall not be liable for damages in a civil action for the actions or omissions arising out of and in the course of officiating at an interscholastic, intercollegiate or any other amateur athletic contest being conducted by a nonprofit or governmental entity. Nothing in this act shall be deemed to grant immunity to any person causing damages by willful or wanton misconduct or intentionally tortious conduct.~~

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

As used in this act: (a) "Athletic official" means a person who administers the rules of a game or sport; and

(b) "officiating" means a discretionary act or judgment by an athletic official arising out of and in the course of the game or contest.

Sec. 2.

for ordinary negligence
educational institution
athletic official

MULTIPLE DEFENDANT COMPARATIVE FAULT SYSTEMS

A. Joint and several liability with comparative fault contribution:

Alaska, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, South Dakota, Utah, Washington, Wisconsin, Wyoming.

B. Joint and several liability with pro rata (equal division) contribution:

Georgia, Massachusetts, Mississippi, Nebraska, Rhode Island, Tennessee, West Virginia.

C. Joint and several liability with no contribution:

Connecticut.

D. Joint and several liability with comparative fault contribution, except comparative fault individual judgment only against any defendant less at fault than plaintiff:

Louisiana, Nevada, Oregon, Texas.

E. Joint and several liability with no contribution, except comparative fault individual judgment system whenever plaintiff is contributorily negligent:

Oklahoma.

F. Comparative fault individual judgment system:

New Hampshire, Ohio, Vermont.

G. Comparative fault individual judgment system with unlimited joinder of immune, unavailable and unknown parties:

Kansas.

House Judiciary
2/22/89
Attachment V

PLAINTIFF v. DEFENDANT COMPARATIVE FAULT SYSTEMS

<u>E</u>	<u>PURE</u>	<u>50% RULE</u>	<u>49% RULE</u>	<u>SLIGHT</u>
Alabama	Alaska ³	Connecticut	Arkansas ⁵	Nebraska
Arizona ¹	California ³	Hawaii ⁴	Colorado ⁶	South Dakota
Delaware	Florida ³	Indiana	Georgia ^{3,6}	Tennessee ^{3,7}
Kentucky ²	Illinois ³	Massachusetts ⁴	Idaho ⁶	
Maryland	Iowa ³	Minnesota ⁴	Kansas	
North Carolina ²	Louisiana	Montana	Maine	
South Carolina	Michigan ³	Nevada	North Dakota	
Virginia ²	Mississippi	New Hampshire	Utah	
	Missouri ³	New Jersey	West Virginia ³	
	New Mexico ³	Ohio	Wyoming	
	New York	Oklahoma ⁴		
	Rhode Island	Oregon		
	Washington	Pennsylvania		
		Texas		
		Vermont ⁶		
		Wisconsin ^{4,6}		

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1. Arizona has a limited comparative fault system limited to certain hazardous employments under its workers' compensation system
 2. Kentucky, North Carolina and Virginia have limited comparative fault statutes applicable only to railroad employees
 3. Comparative fault system was judicially adopted
 4. The original comparative fault statute adopted the 49% rule and was subsequently amended to adopt the 50% rule.
 5. Arkansas' original comparative fault statute adopted pure comparative fault and was subsequently amended to adopt the 49% rule.
 6. Plaintiff's fault is compared separately with the fault of each defendant rather than with the combined fault of all defendants for purposes of applying the 49% or 50% rule.
 7. Tennessee still follows the common law "all or nothing" contributory negligence rule except in cases in which plaintiff's fault is deemed to be "remote".