Approved March 8, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~a.m.~~/p.m. on February 21, 1990 in room 313-S of the Capitol.

All members were present except:

Representative Peterson, who was 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 Robert Vancrum
Annajoe Clark, Overland Park
Mary Workman, Topeka
Bill Paprota, Attorney, Overland Park
Representative Henry M. Helgerson, Jr.
Marla Mack, Wichita
Michael Lechner, Executive Director, Kansas Commission on Disability Concerns, Department of Human Resources
Lila Paslay, Associated Retarded Citizens of Kansas
Ed Schaub, KPL Gas Service
Mark Vining, Kansas Gas and Electric
Dennis Clyde, representing Kansas Trial Lawyers Association
Jim Clark, Kansas County and District Attorneys Association

HEARING ON HB 2744 Court ordered child support through college

Representative Robert Vancrum informed the Committee HB 2744 would provide an option for child support obligation to continue beyond the age of 18 and through college.

Annajoe Clark of Overland Park told the Committee that she is divorced and has three sons, 19, 17 and 15. She informed the Committee that Kansas law does not provide anything for the education of children past 18 years of age and high school graduation. Other states, including Missouri, provide for child support through age 22 as long as the child is in college. He ex-husband will not continue child support for the oldest son so he can attend college because the Kansas law says he doesn't have to, see Attachment I.

Mary Workman testified she has an 18 year old daughter who has been planning on attending college, but because Ms. Workman's ex-husband's obligation for child support will end with her daughter's graduation, she will not be able financially to send her daughter to college. She said that her ex-husband, who is more than capable of assisting financially but refuses to do so, should be legally obligated to help his daughter go to college, see Attachment II.

Bill Paprota, Attorney, testified that HB 2744, as presently written, is ill advised. He said there is no demonstrated need, based on current research data developed from Kansas sources, that indicates that Kansas children of divorce are being specially deprived of a post-secondary education. He recommended HB 2744 be recommended for an interim study, and that a significant research budget be allotted so that relevant data from Kansas sources can be developed, see Attachment III.

There being no other conferees, the hearing on HB 2744 was closed.

HEARING ON HB 2908 Child support under 22 for handicapped child

Representative Henry M. Helgerson, Jr., testified HB 2908 allows in a divorce proceeding that if the court finds a child is unable to support themselves due to mental or physical handicap, the judge may order a continuation of support until the child reaches 22 years of age. The state presently requires special education for handicapped children up to age 22 and Kansas law allows

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 of child support benefits if the child is still attending high school upon attaining the age of 18. He attached information from other states, see Attachment IV.

Marla Mack spoke in favor of HB 2908. She said she is divorced and has a 14 year old son with Down's syndrome. She said there should be a provision in the law for child support for mentally and physically handicapped children past the age of 18.

Lila Paslay, Association of Retarded Citizens of Kansas, submitted prepared testimony in favor of HB 2908, see Attachment V.

Michael Lechner, Executive Director, Kansas Commission on Disability Concerns, Department of Human Resources, testified the noncustodial parent should be obligated for support as long as the custodial parent has the support of the handicapped person. He said he was handicapped, but not disabled, see Attachment VI.

There being no other conferees, the hearing on HB 2908 was closed.

HEARING ON HB 2673 Overhead Power Line Accident Prevention

Ed Schaub, KPL Gas Service, testified HB 2673 is a safety bill. He said the bill provides that unless precaution is taken against contact with a high voltage overhead power line (over 600 volts) no person, tools or equipment are to come within 10 feet of the line. Persons who need to work within the 10 foot clearance are required to notify the public utility that owns the line. The utility must then begin making sure the area is safe. The rebuttable presumption section means if a person was working around a high voltage power line and didn't call the utility, the law says it is presumed the person should have known about the line and called the utility company. However, the person may present evidence to indicate why they were not at fault, see Attachment VII.

Mr. Schaub explained the bill is intended to help prevent accidents, injuries, deaths and subsequent lawsuits. The best way to do that is to prevent accidents, damage and injury before they happen. However, if KPL is negligent then they should be responsible and liable for any damage. The proposed bill does absolutely nothing to change Kansas comparative negligence laws.

In response to questions from the Committee, Mr. Schaub said there are about 50 accidents a year where KPL property is damaged. More information was requested by the Committee.

Mark Vining, Kansas Gas and Electric Company, testified that this bill will provide protection to employees who are required by the nature of their jobs to work near high voltage overhead power lines. Adherence to the requirements in this act will also help reduce damage to utility property and contractor's property; damage to third parties and the inconvenience resulting from interruption of electrical service, see Attachment VIII.

Dennis Clyde, representing Kansas Trial Lawyers, testified in opposition to HB 2673. He said HB 2673 is in reality the overhead power line immunity act. Its purpose is to provide utility defense attorneys with yet another defense, even in those cases involving negligence by the utility. If accident prevention is the objective of the bill, a utility should not be permitted to withhold "safety precautions" until it is paid, see Attachment IX.

Jim Clark, Kansas County and District Attorneys Association, stated he was opposed to 6a of the bill.

There being no other conferees, the hearing on HB 2673 was closed.

The Committee meeting adjourned at 6:20 p.m. The next meeting will beThursday, February 22, 1990, at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/21/90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bev Bradley	Topeka	KS Assoc of Counties
Jim Clark	Topeka	KCDAA
Ralph Skoog	Topeka	Ks CATV assn
Ron Smith	"	KS Bar
R.G. Frey	Topeka	KTLA
Woody Woodman	KCMO	KCPL
Steve Jaimeson	St. L. Mo.	
Arrapa Clark	Overland Pks	witness
Ed Schaub	Topeka	KPL Gas Service
Jeff Southard	Topeka	KPL
Paul Shelley	Topeka	OJA
KAY FARLEY	TOPEKA	OJA
Jamie Corkhill	Topeka	SRS
William Papreta	Leawood	witness/atty
Randy Burleson	Columbus	Empire Electric
Curt Carpenter	Great Bend	Centel
Louis Stroup Jr.	McPherson	Kansas Municipal Utilities
Jim Kaup	Topeka	League of Municipalities
Dennis Clyde	Overland Park	KTLA
Kathy Polzkill	Lawrence	Kansas Public Service Co.
Janet Gardner	Lawrence	Southwestern Bell Corp
Tim Clark	Lawrence	Communication Workers
John Niccum	Ottawa	COMMUNICATION WORKERS OF A.
Martha Gabehart	Topeka	KS Commission on Disability Concerns

Michael Lechner	Topeka	Kansas Commission on Disability Concerns
Mary Workman	Topeka	Custodial Parent
Jim DeHoff	Topeka	Kansas AFL-CIO

Annajoe Clark

I am here today to talk to you about my feelings regarding Kansas Law and Child Support.

I was married 24 years and I have 3 sons, ages 19, 17 and 15. My husband and I worked hard to provide for our future and for the future of our children. We decided that I would stay home and he would provide the financial support for our family. Our divorce became final last June.

Life has changed. I knew it would, however, I did not realize that Kansas law, while it provides for many things, does not provide anything for secondary education for children.

My 19 year old son graduated from high school last May, and the child support for him stopped almost as soon as he was handed his diploma. He lived with me (I am the custodial parent for all three children) until October. During this time he had to make a decision about college. All his life he had planned to attend college, had made very good grades and his plan is to pursue a degree in Engineering - not an easy road to follow. Because the Child Support Law does not provide support after 18 and graduation, I had no help with his support. My son deserves to go to college, and it became very clear that in order for him to do so he would have to work full time in order to pay a great portion of the expenses.

During divorce negotiations, in order to ensure college for my sons, I volunteered to waive my entitled maintenance and asked their father to agree to pay for half of the expenses. Because Kansas Law does not provide for college years, he said he wasn't obligated. He did agree to pay for 1/3 of the expenses or up to a maximum of $2,000 per year. This is less than half of what child support would contribute toward college and living expenses, not to mention he is not paying any maintenance to me. I still have two other boys to raise and care for and cannot afford the college expenses. Because I wasn't out in the work force for 17 years while the children were younger, I do not have the experience to draw a salary to support the life style in which we were accustomed. I knew this, but I did not think that my sons would

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Attachment I

have to worry about their college education.

My annual salary is $16,800.00. The last I knew, my ex-husband's salary was $55,600.00 plus an annual bonus. According to the Kansas Child Support guidelines, I was to receive $1,500.00 per month for Child Support. My son graduated from high school prior to the divorce becoming final, therefore, I receive $1,100.00 per month for my other two sons. Had Child Support continued through age 22, my son's college could have been taken care of. But because Kansas Law doesn't provide for secondary education, my ex-husband wouldn't agree. I won't get in to a father's or a parent's moral responsibility to help provide secondary education. All I know is that his stand on the matter is "Kansas Law says I don't have to, so I won't".

For clarity in comparing the money, my ex-husband agreed to pay $2,000 per year compared to $4,800 per year which child support would have been In today's world when a child is dedicated and works very hard at school and knows that college is a must, and plans his life accordingly, should he, because of divorce and no provision for child support after 18 and high school graduation, have to carry the burden of college expenses, when his father can afford the expenses. Because of this, my son is not in college today, but has enlisted in the Army, and will be getting some assistance toward his college from the U. S. Government. This wouldn't have happened if Child Support would continue through age 22 as long as the child is in college.

Something is wrong here - other states provide for Child Support through age 22 as long as the child is in college. Missouri is one of those states.

Divorce is ugly and devastating to say the least. Why should the future of my children and other children be in jeopardy because Child Support stops at age 18 and high school graduation??? Where is it written that these children need additional pressure about college - don't they have enough pressure already?

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Att I

February 21, 1990

Chairman and Committee Members:

My name is Mary Workman and I thank you for allowing me to speak before you today in support of HB 2744 -- Court ordered support through college.

I was married 21 years and was divorced 2 years ago -- my daughter was 16 years old at the time and a sophomore in high school.

My daughter turned 18 last October, two months into her senior year in high school. The extended child support through high school has allowed her to stay in school and continue to participate in academic and athletic activites. (She has a 4.0 grade point average and participates in the math club, Spanish club, band, volleyball, softball, track and various social groups.)

We have been fortunate in that we have been allowed to stay in our home. I refinanced that home in order to afford in on a secretary's salary. Now our property taxes have doubled and we do not quality for assistance under the Circuit Breaker because my daughter turned 18 while still in high school.

My daughter has been planning on attending college since she was in the 3rd grade. She has had to rule out her dream of attending K-State or Kansas University ($6,000) as they are much too expensive. We have visited five community colleges in the state and are trying to obtain both academic and athletic scholarships for her (books and tuition). However, even with that she will need somewhere between $200-$400 per month for lodging, meals, and miscellaneous expenses.

My responsibility did not automatically end when my daughter turned 18; nor will it automatically end when she graduates from high school. I sincerely feel her father, who is more than capable of assisting financially but refuses to do so, should be legally obligated to help his daughter get a start in life. I am afraid that she will be forced to drop out of school before she even receives a two year associate degree because of financial difficulty. She should not have to give up her dream and future.

Thank you for listening and caring.

Mary A. Workman
840 N.E. 35th Street
Topeka, KS 66617

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Attachment II

To: House Judiciary Committee
From: William J. Paprota, Esq.
Re: H. B. 2744 (amending K.S.A. 60-1610)
Date: 2/21/90

It is the position of the presenter, William J. Paprota, that H. B. 2744, as presently written, is ill advised as detailed below. There is no demonstrated need, based on any current research data developed from Kansas sources that indicates that Kansas children of divorce are being specially deprived of a post-secondary education. If the matter is to be taken up seriously as a fundamental shift in state policy, at a minimumm, the matter should be assigned to Interim Study and be allotted a significant research budget so that relevant data from Kansas sources can be developed to address the significant issues addressed below.

1. Source of existing research data. The California Children of Divorce Project, conducted between 1971 and 1980, is the only known research data readily available. This research is summarized in Wallerstein & Corbin, "Father-Child Relationships After Divorce: Child Support and Educational Opportunity," 20 Fam. L. Q. 109 (1986). The problems with this research data are threefold:

a. Research is "dated." The study was conducted between 1971 and 1980. It is now 1990. The relevancy of this data, in light of significant economic changes that have occurred through the 1970's and 1980's, as well as the continuing escalation of the cost of attending college, should, indeed, be seriously questioned.

b. Research sample was too small. The research project mentioned above was limited to sixty (60), largely white, middle class families whose 131 children were between the ages of 2 and 18 at the time of marital separation.

c. Geographical location of research affects relevancy. The research project mentioned above was conducted in the San Francisco area of Northern California. The relevancy of the cost of education, in particular, and the overall cost of living, generally, would appear to have a significant impact on the availability of cash to fund post-secondary education.

How can a limited study conducted over a decade ago in an area known for its extremely high cost of living and located 1,300

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miles from Kansas be relevant in determining whether the State of Kansas ought to undertake a fundamental shift in state policy and require the payment of child support through age 22?

2. What costs would be covered by the new law? There is no readily available standard by which to judge a divorced parent's monetary obligation to the child for post-secondary education. Is it the best school that the child can get into (Harvard, Yale, Vasser, K. U., K-State, Washburn, Pittsburg State) ? Or is it limited by what the parent can afford irrespective of the child's demonstrated ability (i.e., child gets accepted to Harvard, but parent can only afford Johnson County Community College) ? Or should it be pegged to a universal standard such as the cost of attending K. U. ? It is suggested that if uniformity of result is desired, there should be established a universal standard.

Is the child entitled, as a matter of right, to tuition, books, student fees and room and board? Does "room and board" mean on-campus dormitory housing, fraternity/sorority housing, or off-campus apartment housing (with or without a roommate) ?

What other items of support would fall within the purview of judicial discretion? Would gasoline and auto insurance be included? Would car payments be included? If so, what kind of a car? If the parent was "rich" would the child, as a matter of right be entitled to a BMW ? If the child's parent is less well off, would the child only be entitled to a used Chevy? Would a clothing allowance be allowable? If so, at what standard? What about "recreational expenses" ? Would the child be entitled, as a matter of right, to Jayhawk season tickets for football and basketball? Or only football, or only basketball? Would the child be entitled, as a matter of right, to a semester in London, Paris or Copenhagen, if the parent could afford it? If the parent could not afford it, would the child be entitled, as a matter of right, to a lesser international experience, say, in Mexico City, Eastern Europe or Africa? What about summer school? Ad nauseam.

As can be seen from the above questions, some of which are obviously stated to interject humor, there needs to be a defined standard by which the courts can be guided and on which parents can rely in planning their budgets. That does not exist in this bill. Passage, as written, will give absolutely no guidance and only insure protracted and costly litigation, all to the detriment of both the children sought to be served by the new law and an already overburdened judiciary.

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3. What are the child's responsibilities to the divorced parent? H. B. 2744 provides no accountability for the child to the parent. Does the divorced parent have a say in what school his/her child will attend? No. Does the divorced parent have a say on insisting that his/her child maintain a 3.0 GPA or a 2.5 GPA, or a 2.0 GPA, or even a 1.5 GPA? No. Why not? Does the divorced parent have a say as to what course work the child will undertake at his/her expense? No. Under H.B. 2744 a child will be able to take Basketweaving 101, Bowling and Archery and Horseback Riding with no veto power present in the payor divorced parent. Does the child have a duty to work while attending college? If not, why not? If so, part time or full time?

4. Need for Relative Responsibility law in Kansas. Above it was mentioned that under H.B. 2744 a child has no reciprocal duty to the paying divorced parent to perform to any academic standard or to financially contribute to his or her own education. The question of a child's duty to a parent, however, especially a parent who is compelled under state law to provide for a college education at considerable cost, needs to be examined in a much broader context than mere academic and/or employment performance while in college.

It must be presumed that a college education for a child will ensure to that child a higher standard of living than if the child did not attend college. Why else would there be a proposed law to require divorced parents to pay for college? If a divorced parent (or married parent, if H. B. 2744 is abandoned) can be required to fund an education to insure a higher standard of living for the child, is it unreasonable to require that a child be required to pay for the medical needs of their indigent and/or handicapped parents?

Under present Kansas law there is no requirement that a child be held responsible for the support of their parents.

It is interesting to note that 27 states currently have relative responsibility laws requiring children to provide for the medical needs of indigent parents. See Byrd, "Relative Responsibility Extended: Requirement of Adult Children to Pay for their Indigent Parent's Medical Needs," 22 Fam. L. Q. 87 (1988). The source of the moral duty of children to support their parents stems as far back as the Fourth Commandment and the legal duty can be traced from Roman Law through to the Napoleonic Code, in Europe, and from an enactment of the English Parliament in 1601 that was the precursor of American relative responsibility laws. In

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light of the long history of such relative responsibility laws, isn't it fair to require the sword, so to speak, to cut both ways, i.e., if a parent is going to be required to fund a college education for a child to insure to that child a higher standard of living, should not that child be required to use the increased earning capacity derived from the education paid for by the parent, as a matter of law, for his or her parent in a time of their financial need? If not, why not?

5. Equal Protection Challenges. H. B. 2744 will create a system of classification between parents and children based solely on marital status (or lack thereof). Under the provisions of H. B. 2744, further, children of intact families and illegitimate children will gain no standing whatsoever. Under the proposed law, a divorced child, either individually or through the divorced spouse, will be able to sue for college expenses. In theory, this will result when a child has a demonstrated ability to attend college but lacks the financial resources to attend and a divorced parent refuses to assist (i.e., "pay"), for whatever reason.

It requires no stretch of the imagination to envision an identical situation where there exists a child in an intact family unit (i.e., Mom and Dad living happily under one roof) who has a demonstrated ability to attend college but whose happily married father refuses to pay for it. Under H. B. 2744, the woeful "child of divorce" will be able to nail Daddy to the wall and make him pay, based, presumably, on Dad's earning ability and have no corresponding duty to perform. This can go on for four long years. On the other hand, the child from the intact family will have no remedy available to force Ward Cleaver/Ozzie Nelson to pay for college. Is this fair? Does this meet a demonstrated need?

When examined closely, the fundamental unfairness of H.B. 2744 should be obvious. If a child has a demonstrated ability to attend college, is from a divorced family, but both parents are either "poor," or, if not "poor," have a demonstrated inability to fund a college education for their children, the old adage will apply: you cannot get blood from a turnip. H.B. 2744, then, is geared only to impact on middle class divorced Kansans. I fear such a classification will fail equal protection standards, under either the "rational basis" or the more difficult "strict scrutiny" standards. With respect to the easier met standard of "rational basis," there is still a requirement that there exist some form of "legislative facts" upon which a finding can be premised that a state interest is being met by the proposed legislation. As of this date, no independent fact finding has

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been done and no review of existing research data has been undertaken.

On the other hand, where the classification of parents is nondiscriminatory (including married, divorced and never married parents) and the collectibility of the duty to pay for college is contingent only upon the parent's ability to pay, constitutional muster will probably be assured. This requires a complete and separate law entirely unrelated to K.S.A. 60-1610. Such a law would create a cause of action in any child against his or her parents (irrespective of the parent's marital status) for financial assistance to obtain a post-secondary education. Such a cause of action can be conditioned upon a request for financial assistance to the parent, in writing, seeking assistance based on ability to pay and a refusal from the parent/s to said request. Unfortunately, the problems noted earlier regarding what costs are to be covered and what corresponding duties does a child have to the paying parent are still present and unresolved.

6. <u>Problems regarding financing of college education in light of present strictures in K.S.A. 60-1610 and Kansas Child Support Guidelines</u>. In approaching the subject of financing college education, some operating premises are needed. With the cost of a four year degree being as high as it is, and increasing every year, it would seem extremely shortsighted, and near impossible to accomplish, to require a parent to pay for college on a month to month basis out of income. The more reasoned approach would seem to dictate that a child's future needs be anticipated while the child is young and then have a plan implemented whereby there is a systematic savings plan in effect that is being funded from current income. Although this appears simple, monumental problems are right around the corner. Such a plan would require a substantial reworking of the not yet complete Child Support Guidelines. A non-custodial parent cannot be expected to pay both the high levels of child support presently required by the guidelines (and possibly alimony too) and fund a savings account for college education. A parent can do both only if the funding levels for both are within the parent's economic means. This means, quite simply, that existing child support levels would have to be reduced to allow for such a savings, or the custodial parent should be required to set aside a portion of the existing child support being paid in a trust account earmarked for education.

Further, under the present wording of K.S.A. 60-1610, a parent cannot be required to create an estate for a child that vests fully in the child after the child reaches majority. As the age

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of majority is 18, any trust presently created for the benefit of a child would cease to exist at the child's 18th birthday. The law would need to be changed to allow for the creation of an education trust that would extend beyond the child's 18th birthday and terminate on the child's 22nd birthday.

If the Legislature would insist on proceeding on the theory that a parent fund college education from current income, the guidelines would still need to be modified to take into consideration those instances where one child attends college and there are still other minor children in high school and grade school. In the event the older child will attend an expensive college, the younger children may have to do without in order to fund the college expense.

7. <u>If funding of college expense is to be from current income, existing laws and regulations governing the Board of Regents is necessary</u>. If the Legislature would insist on proceeding on the theory that a parent fund college education from current income, amendments to existing statutes and regulations governing the Board of Regents and/or individual colleges or licensed educational facilities within the state that are outside the auspices of the Board of Regents, would need to be enacted. If a parent is compelled by law to pay for post-secondary education of a child, and the parent is of limited means and forced, by necessity, to budget said expense, the Legislature has both the power and the duty to compel educational institutions in this state (institutions that operate at the will of the Legislature or by license granted from the State of Kansas) to accept payment of said post-secondary expenses as per the terms of any court order directing that payment, without interest, or face losing state funding and/or licensure. The same methodology applied by the Federal Government on State government (whether it be mandatory child support guidelines or lost Federal funding of welfare programs, or mandatory age 21 drinking laws or lost Federal funding of highway programs) can be applied by State government on State Agencies or entities deriving licenses to operate from state agencies. Such a law could call for the attachment of state income tax refunds in the event of default and provide for stiff interest penalties, as well, if the terms of the court order were not adhered to.

Without such suggested changes requiring educational institutions to accept installment payments for post-secondary education expense, H.B. 2744 will create a nightmare not a remedy. It is not enough to provide a remedy for a child in need of an educa-

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tion. If the means to that education is parental assistance, albeit coerced, there must be a viable means for the parent to meet the obligation imposed by law. If not, the Legislature will have engaged in the art of circumlocution and nothing of substance will have been resolved.

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STATE OF KANSAS

HENRY M. HELGERSON, JR.
REPRESENTATIVE, EIGHTY-SIXTH DISTRICT
4009 HAMMOND DRIVE
WICHITA, KANSAS 67218-1221

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER APPROPRIATIONS
ECONOMIC DEVELOPMENT
ELECTIONS

TESTIMONY ON HB 2908

HB 2908 allows in a divorce proceeding that if the court finds a child is unable to support themselves due to mental or physical handicap, the judge may order a continuation of support until the child reaches twenty-two years of age.

At least three other states have provisions to allow support for handicapped children past the age of eighteen. Attached is a summary of this information. The revisor has unabridged information.

This issue was brought to my attention by a constituent, Marla Mach, who felt that a judge should have the option to require support for handicapped children, and I agree. I also understand that this may raise several other questions.

> Why should divorced parents of handicapped children pay child support, while parents remaining married are not legally required to support the child past age 18?
>
> Is the support payable even if the custodial parent commits the child to a state institution?
>
> Does this jeopardize any federal or state support for the handicapped child?

The state presently requires special education for handicapped children up to age 22. We already recognize the special needs these children have. Our present law allows continuation of benefits if the child is still attending high school upon attaining the age of eighteen.

I believe it is only fair that we allow a judge the opportunity to require support for handicapped children up to age twenty-two.

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Attachment IV

HOUSE BILL 2908
SUMMARY INFORMATION FROM OTHER STATES

Divorce - Child Support for persons with disabilities

Minnesota

1. Definition of Child - not limited in terms of age for persons with disabilities. (1978 Amendment)

2. McCarthy v. McCarthy represents Minnesota case law supporting maintenance payments past the age of majority for children with disabilities (mental or physical).

Texas

1. Financial resources available for support of the child are a consideration in determining the amount of child support.

2. If the court finds that a child is mentally or physically disabled and unable to support him/herself, the Court can order support payments to continue for an indefinite period past the age of 18.
   NOTE: This measure must be requested in the original divorce petition.

3. Without an agreement otherwise, support to the child cease at the time of the child's marriage or removal of the disability.

4. The statute conveys authority for the court to award support continuing after age eighteen, this is not a requirement.

5. A finding of the child's need for continuous care and personal services as a result of the disability is necessary.

6. Rose v. Rubinstein - The court in this case took into consideration the son's minimal income and upheld paternal support order even though the son was 24 years old. The son was mildly retarded, worked full-time at minimum wage, but could not support himself without help from the father.

7. Support may be required from one or both parents of an adult child with disabilities (Sec. 14.05(b) TX Supp)

8. Sec. 14.051 further defines the support obligations for adult children with disabilities. The court must find that:

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a) the child (whether institutionalized or not) requires substantial care and personal supervision because of a mental or physical disability;

b) the child will not be able to support him/herself;

c) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.

9. Under the Parent and Child duty to support (unlike divorce), an action for support can be brought at any age of the child.

10. Considerations for the amount of support include:

a) existing and future needs;

b) who will provide care;

c) financial resources available to parents and children;

d) Any other financial resources.

Illinois

1. Financial resources of the child are considered in determining the amount of support.

2. Section 513 codifies well-established case law allowing the courts to provide support for disabled children past the age of majority.

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THE ASSOCIATION FOR
RETARDED CITIZENS OF KANSAS, INC.

P.O. BOX 676 • HAYS, KS 67601

Hope through understanding

February 21, 1990

TO: Rep. Michael O'Neal, Chairperson
Members of the House Judiciary Committee

FROM: Lila Paslay, Chairperson
ARC/Kansas Governmental Affairs

RE: H. B. 2908

ARC/Kansas represents 5,000 individuals in Kansas who are parents and advocates for Kansas citizens with mental retardation.

As advocates, we are very aware of the number of single parents families in Kansas. The divorce rate for families in which there is a disabled child is one out of two.

The economic impact of a disabled child in a family is significant. Those expenditures do not decrease as the child ages. Families that have nonhandicapped children anticipate that at age 16 or 17 years, the child will contribute to the income of the family. For families with a handicapped child, the expenses tend to continue to escalate as special equipment needs increase, child care needs continue, and often medical costs also increase.

Since handicapped children may remain in public schools until age 21, we believe that it is imperative that child support continue for the parent who has the child in custody. We often find that not only is the parent who is away from the home escaping from financial obligation but also from emotional support as well.

We believe that it is in the best interest of those children with handicaps for there to be some assurance that at least they will retain the advantages of financial support even though there is may be no desire on the part of the absent parent to provide any other type of support.

We strongly urge you to pass this bill out of this committee favorably.

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Attachment V

KANSAS DEPARTMENT OF HUMAN RESOURCES

COMMISSION ON DISABILITY CONCERNS
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
913-296-1722 (Voice)●913-296-5044 (TDD)●561-1722 (KANS-A-N)

Mike Hayden, Governor

Ray D. Siehndel, Acting Secretary

February 21, 1990

Testimony on HB 2908

Michael Lechner, Executive Director

Thank you for this opportunity to testify on HB 2908. We support the concept of extending support payments for children with disabilities beyond the age of 18. Children with disabilities who would be covered by the act would be in institutions were it not for the custodial parent providing necessary support which enables that child to live more freely in the community. We believe that the custodial parent of such a child is performing a service to the taxpayers by saving tax dollars which would otherwise be expended on very expensive institutionalization. If the custodial parent is willing to provide support for the child, it naturally follows that the noncustodial parent should be required to assume a fair share of the financial responsibility. If such support payments expire, the ability of the custodial parent to provide care is critically compromised and the probability that additional tax dollars will be expended is magnified.

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For the reasons stated above, we further encourage the committee to delete any age limit at which the support payments would cease. There is nothing magical which happens to people with disabilities at age 18 or 22 or 35 or ever which would justify the withdrawal of support. The decision is whether these support services will be borne by tax payers or the responsible parent. There are sufficient safeguards in other sections of the bill to preclude a financial burden on the noncustodial parent.

We further suggest that the responsibility of the noncustodial parent be addressed in the event that the custodial parent dies or is otherwise rendered incapable of maintaining custody.

Thank you for your consideration of these remarks.

TESTIMONY

TO

HOUSE JUDICIARY COMMITTEE

HOUSE BILL 2673

FEBRUARY 21, 1990

BY ED SCHAUB, KPL GAS SERVICE

Mr. Chairman, Members of the Committee:

KPL Gas Service asked for House Bill 2673 to be introduced. We believe it will help prevent accidents, injuries, deaths and subsequent lawsuits. Here is KPL's interest in this legislation. People sue utility companies. People perceive that utility companies such as KPL Gas Service have "deep pockets." We want to prevent lawsuits, regardless of the type. We believe the best way to do that is to prevent accidents, damage and injuries before they happen.

Let me be very clear. If KPL is negligent -- if we have a line in the wrong place or if we don't respond when someone calls to change a line -- then we should be responsible and liable for any damage. This proposed bill does absolutely nothing to change Kansas comparative negligence laws.

On the other hand, just like utility companies and other businesses, individuals should also be responsible for their own actions. If someone is going to be working around a high

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-more-

818 KANSAS AVENUE ★ P.O. BOX 889 ★ TOPEKA, KANSAS 66601 ★ (913) 296-6300

Attachment VII

voltage line, all they have to do is make a telephone call. We will go out and reroute the electricity or deaden the line, so the workers will be safe around the line. If someone works around our lines and doesn't let us know and then causes damage or injuries, they should be responsible for those actions; like we are for ours. But for all of the focus on liability issues, the proposed bill is at its heart, a safety bill. In most states that have similar laws, they are codified in the sections dealing with worker safety.

Here's what the bill says: Unless precaution is taken against contact with a high voltage overhead power line (over 600 volts), no person, tools or equipment are to come within 10 feet of it. (10 feet is the OSHA standard and the standard in most of the other 21 states that have overhead laws.) Persons who need to work within the 10 foot clearance are required to notify the public utility that owns the line. The utility must then begin making the area safe.

21 states have overhead power laws (exhibit attached). Three states -- Oregon, Virginia and Wyoming -- passed laws just last year. We also supported a bill in Kansas last year which passed the Senate and this committee, but there were questions on the House floor about the liability issue. Some were concerned it might take all liability away from the utility company. That was not our intent. In good faith, we suggested adding a section that adds a "rebuttable presumption." This means if a person was working around a high voltage power line and didn't call us, the law says it is presumed you should have known about the line and called us.

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However, the person may present evidence to indicate why they were not at fault. Last year's bill said if there was a violation, the party was liable for all damages. It did not contain the rebuttable presumption section. This bill does not give any kind of blanket immunity to utility companies. We have based all of the factors in this bill -- distance, notification requirements, response times, etc. -- on the most common standards found in the laws of those other 21 states. The "rebuttable presumption" clause would be unique to Kansas.

Under this proposed legislation, the utility company is responsible for responding quickly to a contractors call. It would not be fair for us to keep work crews standing around while they wait for us to come out and make a line safe. The contractor will know ahead of time when workers will be around a line and in most cases arrangements will be made between the utility and the contractor in advance of whenever work must be done around the line.

Usually, the utility could simply put a rubber insulating blanket over a line (and we cannot charge for such protection) or for temporary deenergization and grounding of conductors. The only time changes that might be involved are when electricity must be re-routed or lines must be temporarily relocated. This would be a rare instance and that is usually taken care of prior to a major construction project. If the utility and the contractor disagreed on the cost, they could go through the state's binding arbitration procedures. The job could go ahead while final payment was being determined. No one

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would be held up from working on their project. We think the arbitration section should be in the law to protect all parties.

There is a section in the bill that says equipment likely to operate close to high voltage lines must bear a sign stating it is unlawful to operate within 10 feet of a line unless precautions have been taken. This is strictly a worker safety provision and it would not cost equipment owners anything. We will furnish such decals free.

There are several exemptions to the act: highway and agricultural equipment which incidentally passes within the clearances, equipment on railroad cars, governmental entities responding to emergencies and persons moving buildings (which are already covered by another state law). It does not apply to a homeowner cleaning leaves out of the gutter, because the drop line from the transformer to the house is a low voltage line not covered by this act. "Authorized" persons, such as other public utility workers and cable TV or telephone workers; do not need to let us know first because they are normally around such lines and are trained to work around them.

In summary, what this bill does is put a burden on a contractor or worker to tell us when they know they are going to be working around a high voltage line. They must tell us. We don't know they're around our lines otherwise. Then it puts the burden on us to do something to make the line safe for the workers to be around. It simply makes people -- whether they're the workers or the utility company -- responsible for their own actions. It helps eliminate a cause of lawsuits.

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And, underlying all of the legal wording, it is intended to help protect life and property.

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Overhead Powerline Safety
Comparative Statutes

Date of Statute/State	1947 California	1955 Tennessee	1960 Georgia	1963 Arkansas	1963 Oklahoma	1966 New Jersey
High Voltage Threshold	750 volts	750 volts	750 volts	440 volts	750 volts	750 volts
Distance Threshold	6 feet	6 feet	8 feet	10 feet	6 feet	6 feet
Civil Penalty/Criminal Penalty	Criminal	Criminal	Criminal	Criminal	Criminal	Civil
Civil Liability for Damages	No	No	No	Yes*	Yes	No
Temporary Clearance/ Costs	No	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	Yes	Yes	Yes	Yes	Yes
Exemptions For:						
Highway Vehicles	No	No	No	No	No	Yes
Agric. Equipment	No	No	No	No	No	No
Railroad Activities	Yes	Yes	Yes	Yes	Yes	Yes
Government Emergency Responders	No	No	No	No	No	No
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

*Amended in 1989. Original bill did not provide for civil liability.

Overhead Powerline Safety
Comparative Statutes

Date of Statute/State	1967 Alabama	1968 Maryland	1969 Massachusetts	1969 Nebraska	1971 Texas	1972 Alaska
High Voltage Threshold	750 volts	750 volts	440 volts	750 volts	600 volts	750 volts
Distance Threshold	6 feet	10 feet	6 feet	10 feet	10 feet	10 feet
Civil Penalty/Criminal Penalty	Criminal	Criminal	Criminal	Criminal & Civil	Criminal	Criminal
Civil Liability for Damages	No	No	No	No	Yes	Yes
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	Yes	Yes	Yes	Yes	Yes
Exemptions For:						
Highway Vehicles	No	No	No	No	No	No
Agric. Equipment	No	No	No	Yes	No	No
Railroad Activities	Yes	No	Yes	No	No	Yes
Government Emergency Responders	No	No	No	No	No	Yes
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

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Overhead Powerline Safety
Comparative Statutes

Date of Statute/State	1973 S. Dakota	1977 N. Dakota	1980 Arizona	1983 Colorado	1988 Mississippi	1988 Utah
High Voltage Threshold	750 volts	600 volts	600 volts	600 volts	600 volts	600 volts
Distance Threshold	6 feet	10 feet	6 feet	10 feet	10 feet	10 feet
Civil Penalty/Criminal Penalty	Criminal	Civil	Civil	Civil	Civil	Civil
Civil Liability for Damages	Yes	No	Yes	Yes	Yes	Yes
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	No	No	No	Yes	No
Exemptions For:						
Highway Vehicles	No	Yes	No	Yes	No	No
Agric. Equipment	No	Yes	No	Yes	Yes	No
Railroad Activities	Yes	Yes	No	No	No	No
Government Emergency Responders	No	Yes	No	Yes	No	No
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

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Overhead Powerline Safety
Comparative Statutes

Date of Statute/State	1989 Oregon	1989 Virginia	1989 Wyoming	21 State Summary	Proposed Kansas Legislation
High Voltage Threshold	600 volts	600 volts	600 volts	440 volts - 2 600 volts - 9 750 volts - 10	600 volts
Distance Threshold	10 feet	10 feet	10 feet	6 feet - 8 10 feet - 12 8 feet - 1	10 feet
Civil Penalty/Criminal Penalty	Civil	Civil	Neither	Civil - 8 Criminal - 11 Neither - 1	Civil
Civil Liability for Damages	Yes	Yes	Yes	Yes - 12 No - 9	Rebuttable Presumption
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes - 20 No - 1	Yes
Mandatory Warning Signs	No	Yes	No	Yes - 15 No - 6	Yes
Exemptions For:					
Highway Vehicles	No	Yes	No	Y-4 N-17	Yes
Agric. Equipment	No	No	Yes	Y-5 N-16	Yes
Railroad Activities	No	Yes	No	Y-12 N-9	Yes
Government Emergency Responders	Yes	No	No	Y-4 N-17	Yes
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes - 21	Yes

TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE
HOUSE BILL 2673
OVERHEAD POWER LINE ACCIDENT PREVENTION ACT
BY MARK A VINING
KANSAS GAS AND ELECTRIC COMPANY
CORPORATE ATTORNEY
FEBRUARY 21, 1990

KG&E actively supports House Bill 2673 and urges its passage by the Legislature. This law, if enacted, will benefit not only utility companies but also Kansans in general. Most importantly, the bill will provide protection to employees who are required by the nature of their jobs to work near high voltage overhead power lines. Adherence to the requirements in the act will also help reduce damage to utility and contractors' property, damage to third parties and the inconvenience resulting from interruption of electric service.

At a recent meeting of the Claims Committee of the Edison Electric Institute (an association of electric companies), a presentation was made about recent court decisions affecting electric utilities. I would like to share with you three of the reported cases.

In one case a painter's aluminum ladder came in contact with a utility's overhead line. The line met all NESC clearances, and the painter was aware of the line and the fact that it was energized. The painter's expert witness testified that the utility should have been aware of painting in the area and should have moved its line. A jury returned a verdict of

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$1,500,000 in favor of the painter. Fortunately, the trial court set aside the verdict and found in favor of the utility and this was affirmed on appeal by the Virginia Supreme Court. Kelly v. Virginia Electric and Power Company, 381 S.E.2d 219 (Va. 1989).

In another case closer to home, two bridge construction ironworkers were injured when rebar they were handling came in contact with the utility's line. The lines exceeded NESC clearance standards. The plaintiffs knew that the lines were energized, having been told repeatedly by the utility representatives of that fact. The plaintiffs contended that the line was maintained too close to the bridge on which they were working. Summary judgement was entered for the utility by District Court Judge Saffels. Slater v. Board of Public Utilities, 703F.Supp.893 (D.Kan.1988).

The case Trett v. Oklahoma Gas and Electric Company, 775P2d275 (Okla.1989) was also discussed. In that case, a worker was injured when machinery came in contact with overhead high voltage lines. The worker sued the electric utility and won a $350,000 jury verdict. The line met all NESC clearance standards and the worker's employer knew that the line was energized. In fact, OG&E and the employer had met pursuant to Oklahoma's "six foot rule" (63 O.S. 1981 Section 981-987) which required notification of the operator of a high voltage conductor whenever workers or materials would come within six

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feet of the line. The utility and the contractor had agreed on a course of action to prevent injury but the construction work was begun prior to the utility's scheduled corrective action. The workers alleged in their lawsuit that OG&E should have been aware that they had begun work prior to the date OG&E was to take the precautionary measures. The Oklahoma Supreme Court reversed the jury verdict and entered judgement for OG&E.

The cases cited above are only a handful of those reported during the EEI meeting, but they are helpful in considering the impact of the House Bill before you. House Bill 2673 will not guarantee that Kansans will no longer be injured when working near overhead power lines. The Oklahoma case proves that the law will not guarantee that everything will operate as expected. The three cases cited do, however, suggest that House Bill 2673 can provide a means to prevent these types of accidents from happening. On examining the facts in each of those cases, the basic premise cited by the plaintiffs in trying to establish that the utility was responsible for the accident was that the **utility should have been aware of the activity in the area** and should have done something on its own volition to prevent the accident. In each of the cases, the utility was successful in shielding itself from liability. The utility was successful because the facts failed to show that it had any knowledge which would require it to act. This is also true in the Oklahoma case, which had a notice rule similar to

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one which would be established by House Bill 2673. Each of the cases turned on the failure to show that a reasonable power company would have taken the added precautions suggested in the lawsuit. House Bill 2673 will provide a means for the utility to get notice and take steps, in conjunction with the work to be performed, to protect the worker from injury.

The cases are illustrative of another important aspect addressed by KPL Gas Service in its testimony before this committee. People do perceive the utility companies as having deep pockets. Plaintiff's lawyers are anxious to name utility companies as defendants and juries seem more than willing, even absent proper facts, to find the utility has violated some standard. Utilities are assumed to have crystal ball powers to know about every construction project or activity happening in its jurisdiction close to its utility lines. There are tens of thousands of miles of overhead electric lines throughout the State of Kansas. House Bill 2673 will assist the utilities in monitoring activities around its facilities. Then steps can be taken with the person coordinating the work to protect against accidental contact with those facilities.

The Kansas Supreme Court in Wilson v Kansas Power and Light Company, 232 Kan. 506 (1983), and Judge Saffels in the Slater case (cited above) recognized that "the transmission of electricity is a necessary fact of modern life." The mere

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maintenance of high voltage lines is not wrongful. A particular use of metal irrigation pipe or construction material or equipment, in or of itself, does not mandate alteration of existing electrical lines otherwise satisfactorily designed and maintained. As the courts noted:

> "To hold that usage of irrigation pipe (or construction of a bridge) alone creates a duty on a power company to raise, bury, relocate or coat its lines would place an unreasonable and unrealistic burden on power companies. This obviously could not be complied with and would, in essence, elevate the power company to the status of an insurer. This has not been and is not now the law of Kansas." (See Wilson, supra, at 514; and Slater, supra, at 897.)

This bill does not relieve the utility of its duty to use the highest degree of care to protect the public from danger. It does provide some balance to the equation by making those persons working around high power lines share responsibility by establishing a reasonable action to prevent injuries.

House Bill 2673 also would assist in protection of utility equipment and the equitable allocation of costs. The person or persons requesting temporary clearances or other safety precautions is to be responsible for the payment of the costs incurred by the utility. A utility has invested a great deal in placing its transmission and distribution lines along rights-of-way, both public and private. Requiring those persons performing work around electric lines to pay for the

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cost of protecting their workers and the utility's equipment more fairly distributes the costs associated with these precautionary measures. It is unfair to electric customers in the State of Kansas to require a utility to recover through its rates the costs associated with performing services for a specific individual or business to facilitate their operations. The proposed legislation also provides for a procedure to determine if those charges are fairly set so that the utility is not unjustly enriched when performing these services.

Note that the bill requires the utility, unless other arrangements have been agreed to or circumstances require longer periods of time, to commence work on the safety precautions within 3 working days after arrangements have been made in accordance with Section 4(a) of the Bill. I believe this is a reasonable provision and I have no reason to believe it is onerous to either the utility or to those persons requesting the utility's services. Quite frankly, in many instances this will not be an issue and service could be provided before the end of the 3-day time period. Other instances involving particularly high voltages or distribution and transmission lines affecting large customers may require more advance planning and preparatory work. I note that in K.S.A. 17-1916, a person intending to move buildings or structures on streets, alleys, roads and highways is required

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to provide not less than 15 days written notice to the utility so that precautions can be made to prevent damage to utility lines. Surely, the protection of people who may come in contact with these lines is not any less important. The proposed legislation properly balances the utility's interests and those of the individual who is interested in performing work in a timely manner.

One final observation is worth noting, in my opinion. Electricity is a necessary fact of modern day life. KG&E is celebrating its 80th birthday this year. On March 1, 1910, KG&E began providing electric service to Southeast and South Central Kansas. Our lives are dependant upon electricity, both at home and at work, for many conveniences we take for granted. Interruptions to that convenience caused by a crane in an overhead conductor or a bucket truck that inadvertently downs a transmission line are not appreciated. The loss of business, computer input, profits or other inconvenience associated with power outages must in some way enter the calculation when considering House Bill 2673. For with every case where precautions are taken and an interruption avoided continuity of service is provided, the health and safety of workers is increased, damage to equipment and facilities of both the contractor and the utility is prevented, and all Kansans are benefited. I urge you to adopt House Bill 2673. I thank you for your time and your attention.

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RICHARD H. MASON
EXECUTIVE DIRECTOR

TESTIMONY

of the

KANSAS TRIAL LAWYERS ASSOCIATION

by

DENNIS CLYDE

before

HOUSE JUDICIARY COMMITTEE

February 21, 1990

HB 2673 - Overhead Power Line Accident Prevention Act

I. THE HAZARDS OF HIGH VOLTAGE ELECTRICITY

> Insulation is required largely because the uncovered high voltage wires are a menace to the public through contacts of an accidental character or by the thoughtless action of third parties or through the acts of children ... current may be carried from these high voltage wires not only by wire or metal appliances of various kinds, but if the limb of a tree, the string of a kite and certain wooden appliances are wet they, too, will serve to conduct the destructive current to the ground and imperil those who come within reach of such things. Boys may be subjected to the peril of the deadly agency while climbing trees or upon buildings which stand near where such wires are placed and thus get into the danger zone. Because these and like contacts happen frequently and are so likely to occur with serious resulting injuries the law requires the covering of the dangerous wires even though they may be strung high and cannot be reached except through the acts of other parties or some other intervening agencies. Whether or not the company should have anticipated such contacts with its uninsulated wires was fairly a question for the determination of the jury. (emphasis added).

Snyder v. Light Co., 98 Kan. 157, 157 P.2D 442 (1916)

2/21/90
H. Jud Com

The utility distributes electricity throughout populated urban areas over bare metal conductors at voltages of 7,200 volts.

Attachment I

An energized wire is a deadly, silent hazard. One cannot use his or her senses of sigh, smell or hearing to determine whether an overhead wire is energized.

The same wire used for construction of the phase (hot) wire is used for the neutral. They are identical, and the ordinary lay person has no way of identifying which of the lines is energized.

Even if the line is known to be energized, there is no way for the lay person to know the voltage of the energized overhead line.

Electricity travels over metal conductors at the approximate speed of light, certainly faster than the ability of any human being to react before injury.

The slightest, unintended brush contact with an energized overhead wire is virtually certain to result in instantaneous serious injury or death. There is no second chance - no ability to react.

Because of this, courts of virtually all states, including Kansas, have recognized that electricity is one of the most dangerous instrumentalities known to man, which requires the electric utility to exercise the utmost or highest degree of care to protect the public from danger.

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II. RIGHTS AND DUTIES OF AN ELECTRIC UTILITY.

Consistent with lawful rules and regulations of the KCC, applicable National Electrical Safety Code (NESC) standards, and municipal ordinances, the utility has sole control over the design, maintenance and construction of its overhead distribution system. The consumer has no realistic control over such decisions. Only the utility has the training, personnel and equipment required to build and maintain overhead wires. In that regard, only the utility (to the exclusion of all other persons), has the right to:

(a) select the point of service to the customer's premises;

(b) repair or maintain its lines;

(c) relocate, bury, isolate, or barricade its lines;

(d) energize or de-energize its lines.

Because of the peculiarly hazardous conditions involved in cases of electrical injury, courts have uninformly held that the duty to exercise the highest degree of care includes the following:

A. Duty to Anticipate Uses or Acts Around Lines.

In Murphy v. Central States Electric Cooperative Ass'n., 178 Kan. 210, 215, 284 P.2d 591 (1955), the court recognized that the high degree of care required of distributors of electricity mandates that care be commensurate with the danger, and "provide such protection as will safely guard against any contingency that

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is reasonably to be anticipated." The act or use to be anticipated is not given a narrow or restricted meaning, and includes acts or uses made by persons "while engaged in any of the duties of life in that section or community." Logan v. Electric Co., supra, 99 Kan. 381, 385 (1916).

Thus, the duty to anticipate is based not upon actual knowledge of the specific use which does result in injury, but from the stringing, operating and maintaining of the dangerous wires themselves. Because the wires contain lethal voltages, the utility must anticipate legitimate uses, inspect for hazardous conditions, and take appropriate corrective action, i.e., insulate the wires, place them out of reach of contact, provide warning signs or discontinue service. Miller v. Leavenworth-Jefferson Elec. Corp., 653 F.2d 1378, 1384 (10th Cir. 1981).

B. Duty to Insulate or Isolate Lines.

In Henderson v. Kansas Power & Light Co., 184 Kan. 691 (1959), the court stated:

> Courts generally, if not universally, hold that the duty to exercise the highest degree of care in the maintenance of high-voltage power lines over private property or streets and highways requires the power company to insulate its wires carefully and properly at all places where others have the right to go, either for work, pleasure or business, or where there is a reasonable probability of contact with them, but the duty to insulate is not absolute and if the company maintains its wires at such height above ground that there is no reason to anticipate that contact will be made with such wires, then insulation is not required. The wire must either be insulated or placed beyond the

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danger line of contact at places where contact is reasonably to be anticipated. 184 Kan. at p. 698 (Emphasis added).

C. Duty to Inspect.

An electric utility must make "frequent and careful inspections" of its equipment. Moseley v. Garden City Irr. Power Co., 159 Kan. 194, 152 P.2d 799 (1944).

D. Duty to Warn.

In Worley v. Kansas Electric Power Co., 138 Kan. 69, 23 P.2d 494 (1933), the defendant power company extended its high-voltage line over private property. Following construction of the line, a tenant of the property owner built a silo in close proximity to the defendant's line. The height of the wire was 20 feet, and the top of the silo 18 feet, above grade. Decedent, an employee of the tenant, was killed when he came in contact with the line while tramping ensilage in the top of the silo. Suit was brought against the power company for negligence in failing to post signs or give other warnings of the dangerous voltage. The court affirmed a verdict for the plaintiff, stating:

> We think it is not an unreasonable requirement that such a company should place warning signs of danger for the protection of those coming within the danger zone. 138 Kan. at p. 74.

In its Employee Safety Manual, KPL acknowledges it has such a duty:

> d. Should an employee notice some particularly dangerous place where there is no warning sign, he shall report the condition at once in order that an appropriate sign may be placed or the dangerous

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condition eliminated if possible. (Pl. Exh. 62; Vol. VI).

E. Duty to Terminate Service.

The KCC grants each utility express authority to de-energize a line at any time a dangerous condition on a customer's premises is observed. (See e. g., KCC Electric Rules and Regulations 5.08.01). A utility is required to terminate service where clear hazards are discovered. Followill v. Gas & Electric Co., 118 Kan. 290 (1923).

III. THE PROPOSAL IMPOSES GREATER BURDENS ON PERSONS INJURED IN KANSAS BY FOREIGN UTILITIES.

For Kansans served by foreign utilities, the proposal will impose burdens not shared by out of state customers. A substantial portion of eastern Kansas is served by KCP&L, a Missouri corporation. In the event H.B. 2673 is enacted, it will only govern the rights of persons injured or killed in Kansas. It will have no effect on the rights or obligations of Missouri residents served by the same utility. Thus, a Missouri resident injured in Missouri by the negligence of KCP&L will have greater protection than would a Kansan injured in his own state. However, if he happens to sustain an injury in Missouri, he would not be subject to the burdens of H.B. 2673, and would be afforded the greater protections afforded by Missouri law. Surely, such an anamoly should not be permitted.

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IV. INNOCENT USERS ARE PENALIZED FOR HAZARDS CREATED BY THE ELECTRIC UTILITY.

NESC Table 234-1 permits a utility to run a bare conductor, energized with 8,700 volts, within 5 feet of a building, including a dwelling. Until a 1977 NESC rules change, the permitted clearance was 3 feet. There is no current NESC rule that requires that lines installed under the old rule be upgraded to the new standard. Under either standard, the minute the homeowner or farmer places a ladder against the wall of his 2 story frame dwelling for needed painting, repair or maintenance, he or she is in violation of the proposed 10 foot rule. In instances where the utility failed to maintain even a 5 foot clearance, an injured person or his survivors are nevertheless burdened with yet another defense, even though it was the utility, not the customer, that placed the line so close to the dwelling.

Before H.B. 2673 is even considered, KPL and other utilities should give some assurance that it will be able to relocate lines adjacent to buildings and other objects, to maintain the required clearance of at least 10 feet, plus any additional clearance to accommodate foreseeable activity that will occur adjacent to the wires.

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V. THERE IS NO EVIDENCE THAT THE PROPOSAL HAS BEEN COORDINATED WITH THE NESC AND KCC, OR THAT IT WILL NOT CONFLICT WITH EXISTING SAFETY STANDARDS.

In Kansas, the electric utility industry is subject to regulation by the KCC. We have been advised that the KCC does not oppose or favor H.B. 2673, and has not yet finally resolved its effect on the existing regulatory scheme. Moreover, all utilities are required to comply with the standards of the National Electrical Safety Code (NESC) promulgated by the Institute of Electrical and Electronic Engineers. The utilities governed by the NESC are substantial contributors to standards making organizations. I. e., they assist in making the rules by which they are governed. Electric Cooperatives funded by the REA are also governed by separate federal regulations, rules and bulletins, unique to the REA.

Electric utilities should be required to give the legislature assurance that H.B. 2673 will not adversely affect the existing regulatory mechanism. Certainly, where conflict or impairment exists, a thorough study first be conducted to determine its effect on public safety.

VI. THE PROPOSAL IMPOSES UNREASONABLE BURDENS ON PERSONS INJURED OR KILLED BY HAZARDOUS OVERHEAD WIRES.

The bill imposes the following burdens:

a. permits the utility to delay implementation of safety measures until it is paid, or the matter of payments has been decided by arbitration;

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b. leaves the decision as to the level of protection to be afforded to the utility.

And, even if the utility violates the clearance requirements of the NESC, and a person is thereby injured or killed as a result of the line contact, the bill imposes on the victim a civil penalty of $1,000.00.

VII. CONCLUSION.

H.B. 2673 is euphimistically titled "the Overhead Power Line Accident Prevention Act." It is in reality the overhead power line immunity act. Its obvious purpose is to provide utility defense attorneys with yet another defense, even in those cases involving negligence by the utility. E. g., if accident prevention were indeed the objective of the bill, why should a utility be permitted to withhold "safety precautions" until it is paid. Payment of expense has no relationship to whether the utility, with the duty to exercise the highest degree of care, is adequately protecting the public safety.

> The degree of care required to protect people from this devastating element is no less than that required to prevent poisonous reptiles from breaking lose from their restraining enclosures. As a proprietor of ferocious beasts may not, by pleading excessive cost of confining them, escape liability for the loss of life occasioned by his savage wards, so also the owner of high voltage machinery may not avoid the responsibility of the devastation caused through his failure to adequately guard such uninhibited devices.

Densler v. Metropolitan Edison Co., 345 A.2d 758 (Pa. Super. 1975).

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