

Approved March 15, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

12:45 ~~am~~/p.m. on March 2, 1990 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

DISCUSSION AND ACTION ON BILLS:

HB 2353 Oil and gas owner's lien act

A subcommittee report on HB 2353 was presented by Representative Snowbarger. The subcommittee report is Attachment I.

Representative Snowbarger moved to remove HB 2353 from the table. Representative Moomaw seconded the motion. The motion passed.

Representative Snowbarger moved to amend HB 2353 as recommended by the subcommittee in Attachment I. The motion was seconded by Representative Walker. The motion passed.

Representative Snowbarger moved to report HB 2353, as amended, favorably for passage. The motion was seconded by Representative Moomaw. The motion passed.

HB 3021 Service of process by certified mail

The Committee discussed an amendment which would allow service by certified mail to an individual at his business address under certain circumstances, see Attachment II. It was decided to add restricted delivery to the amendment.

A motion was made by Representative Shriver to adopt the amendment. Representative Whiteman seconded the motion. The motion passed.

Representative Jenkins moved to report HB 3021, as amended, favorably for passage. Representative Snowbarger seconded the motion, and the motion passed.

HB 3045 Reinserting prosecuting attorneys' training fund into court fees.

Representative moved to strike on page 1, line 41, "the crime victims compensation fund". Representative Jekins seconded the motion. The motion passed.

Representative Snowbarger moved to report HB 3045, as amended, favorably for passage. Representative Buehler seconded the motion. The motion passed.

HB 3043 Increasing compensation for screening panel members

Representative Snowbarger moved and Representative Solbach seconded to report HB 3043 favorably for passage. The motion passed.

HB 2770 Violations of the uniform controlled substances act including minors

The Committee discussed adding juveniles to the aiding and abetting statutes.

Representative Solbach moved to make HB 2770 a substitute bill by amending K.S.A. 21-3205 to read, an adult is liable for the crime committed by a juvenile if the juvenile had been an adult. The motion was seconded by Representative Roy. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 12:45 ~~am~~/p.m. on March 2, 1990.

Representative Solbach moved and Representative Jenkins seconded to report HB 2770, as amended, favorably for passage. The motion passed.

HB 2689 Limitations on actions on latent diseases

The Committee discussed the proposed amendments from the Kansas Trial Lawyers Association, see Attachment III and the K.C.C.I., see Attachment IV.

A motion was made by Representative Snowbarger to adopt the amendment on page 1 proposed by the Kansas Trial Lawyers Association, and the amendment at the top of page 2 of the proposed amendment by K.C.C.I. Representative Jenkins seconded the motion. The motion passed.

A conceptual motion was made by Representative Snowbarger to amend the bill to add a revivor of two years prior to the date of the Tomlinson decision, and have until December 31, 1990 to bring a claim. Representation Jenkins seconded the motion. The motion passed.

Representative Vancrum moved to make the publication in the Kansas Register the effective date. Representative Snowbarger seconded the motion. The motion passed.

Representative Jenkins moved and Representative Solbach seconded to report HB 2689, as amended, favorably for passage. The motion passed.

HB 2673 Overhead power line accident prevention

Ed Schaub, KPL Gas Service, explained two letters he mailed to Representative Michael O'Neal, Chairman, House Judiciary Committee, dated February 27 and February 28, 1990, see Attachment V. The letters were in response to Committee requests made during the hearing on HB 2673. He recommended an amendment to subsection (a) of Sec. 6 to make it clear the burden of compliance is upon the contractor, not the employee.

Representative Douville moved to strike on page 2 lines 25, 26, 27 and 28 through the word "may", and also strike lines 31, 32, 33 and 34, starting with the word "shall". Representative Solbach seconded the motion. The motion passed.

Representative Snowbarger moved to adopt the amendment proposed by KPL Gas Service. Representative Moomaw seconded the motion. The motion passed.

A motion was made by Representative Solbach and seconded by Representative Hochhauser to amend Sec. 6 to make it a private cause of action. The motion passed.

Representative Solbach explained an amendment to HB 2673, see Attachment VI. The amendment adds a new Sec. 6 requiring the utility company to post and maintain a durable warning sign on each pole, transformer and other high voltage overhead equipment owned by such public utility, not included in Sec. 5, and what the signs should say. The amendment also adds a new (c) in Sec. 7 which requires the public utility to comply with the National Electrical Safety Code and if the utility violates this act or the National Safety Code, it shall be conclusively presumed that such utility failed to exercise the highest degree of care and there shall be a rebuttable presumption that such public utility was negligent as a result of said violation.

Representative Solbach moved to adopt the amendment he proposed. Representative Adam seconded the motion. The motion failed.

Representative Douville moved and Representative Buehler seconded to report HB 2673, as amended, favorably for passage.

Representative Roy moved to strike Sec. 7 (a) (b) and (c). The motion failed for lack of a second.

Representative Everhart moved to exempt multi-family residential property. Representative Solbach seconded the motion. The motion failed.

Representative Shriver moved and Representative Solbach seconded to exempt single family residences. The motion failed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 12:45 ~~xxx~~ p.m. on March 2, 1990.

A vote was taken on the motion to report HB 2673 favorably for passage, as amended. The motion passed.

Representative Solbach requested to be recorded as voting "no".

The Chairman announced the minutes of February 13, 14, 15, 19 and 20 would be approved on Monday, March 5 at 12:00 noon, if there were no additions or corrections.

HB 2258 Interference with parent/child communications in domestic relations

Representative Solbach moved and Representative Vancrum seconded to report HB 2258 favorably for passage. The motion passed.

HB 2920 Expedited appeal of habeas corpus actions involving extradition

The Committee discussed amending HB 2920.

Representative Whiteman moved and Representative Snowbarger seconded to amend HB 2920 on page 2, line 18, by striking everything after the period and by striking all of line 19. The motion passed.

Representative Jenkins moved to report HB 2920, as amended, favorably for passage. Representative Lawrence seconded the motion. The motion passed.

HB 3039 Personal service of process at time of arrest allowed in drug forfeiture cases.

Representative Gomez moved to report HB 3039 favorably for passage. Representative Solbach seconded the motion. The motion passed.

The Committee meeting was adjourned at 3:00 p.m.

HB 2353

AN ACT concerning oil and gas; providing for a trust on severed oil and gas and the proceeds from the sale thereof to provide payment to interest owners entitled to payment by reason of the sale of severed oil or gas as beneficiaries of said trust.

Be it enacted by the legislature of the State of Kansas

Section 1. Sections 1 through 5 shall be known and may be cited as the oil and gas owners' lien act.

Section 2. As used in this act:

- (a) "First purchaser" means the first person who purchases oil or gas from an interest owner after the oil or gas is severed.
- (b) "Interest owner" means a person who, by reason of provisions of an oil and gas lease, owns an interest of any kind or nature in severed oil or gas or or a person who has a right to receive a monetary payment determined by the value or the proceeds of sale of the oil or gas so severed.
- (c) "Person" means any individual, executor, administrator, estate, agent, trust, trustee, institution, receiver, business trust, firm, corporation, partnership, cooperative, joint venture, governmental entity nor agency, association or any other group or combination acting as a unit.
- (d) "Severed" means the taking, extraction or production from the land of oil or gas.

Section 3.

- (a) To secure payment due by reason of the sale of severed oil and gas, the oil and gas so severed and the proceeds of sale thereof shall be considered to be held in trust for the interest owner, subject to the provisions of this act, to the extent of the interest owner's interest in the oil and gas so severed and the proceeds of sale thereof until payment has been made to the interest owner. The person holding the severed oil or gas, or the proceeds of the sale thereof, shall be considered to be the trustee under this act.

3/2/90
H. Jud. Com.

Attachment I

- (b) Notwithstanding any other provision in this act to the contrary, any first purchaser who pays the purchase price for oil or gas so severed to the person authorized to receive the same from such first purchaser shall be deemed a buyer in the ordinary course of business, as defined in K.S.A. 84-1-201 and amendments thereto, and shall take the oil or gas free of the trust created by this act.

Section 4.

If the payment due by reason of the sale of oil or gas is not made to the interest owner within 90 days from the date of payment of the purchase price to one who is authorized to received such payment, the interest owner may commence an action in the district court of the county in which the severance of the oil or gas occurs to enforce the trust imposed by this act and to require the trustee to either distribute to the interest owner the interest owner's share of the oil or gas so severed or the proceeds of sale thereof.

Section 5.

Nothing in this act shall be construed to impair or affect the right of any person to whom any debt may be due to pursue any other relief available at law or in equity to such person.

Section 6.

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

3/2/90
H. Jud Com.
Att I 2

HOUSE BILL No. 3021

By Committee on Judiciary

2-20

3/2/90
W Jud Com
Attachment II

9 AN ACT concerning the service of process by certified mail; amend-
10 ing K.S.A. 60-203, 60-305, 60-305a, 60-307, 60-311, 60-1402, 60-
11 2003, 61-1703, 61-1719, 61-1802, 61-1807 and 61-2304 and K.S.A.
12 1989 Supp. 60-245, 60-301, 60-303, 60-304, 60-308, 60-312, 61-
13 1801, 61-1803, 61-1805 and 61-1806 and repealing the existing
14 sections; also amending Form No. 4 in the appendix of forms
15 following K.S.A. 60-269, Form No. 3 in the appendix of forms
16 following K.S.A. 61-2605 and Form No. 1 in the appendix of
17 forms following K.S.A. 1989 Supp. 61-2605 and repealing the
18 existing forms; also repealing K.S.A. 1989 Supp. 60-314.
19

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

21 Section 1. K.S.A. 60-203 is hereby amended to read as follows:
22 60-203. (a) A civil action is commenced at the time of: (1) Filing a
23 petition with the clerk of the court, if service of process is obtained
24 or the first publication is made for service by publication within 90
25 days after the petition is filed, except that the court may extend
26 that time an additional 30 days upon a showing of good cause by
27 the plaintiff; or (2) service of process or first publication, if service
28 of process or first publication is not made within the time specified
29 by provision (1).

30 (b) If service of process or first publication purports to have been
31 made ~~within the time specified by subsection (a)(1)~~ but is later
32 adjudicated to have been invalid due to any irregularity in form or
33 procedure or any defect in making service, the action shall never-
34 theless be deemed to have been commenced ~~by the original filing~~
35 ~~of the petition at the applicable time under subsection (a)~~ if valid
36 service is obtained or first publication is made within 90 days after
37 that adjudication, except that the court may extend that time an
38 additional 30 days upon a showing of good cause by the plaintiff.

39 (c) The filing of an entry of appearance shall have the same effect
40 as service.

41 Sec. 2. K.S.A. 1989 Supp. 60-245 is hereby amended to read as
42 follows: 60-245. (a) *For attendance of witnesses; form; issuance.* Every
43 subpoena for attendance of a witness shall be issued by the clerk

ineapacitated person, (1) by delivering a copy of the summons and of the petition to the individual personally; (2) by leaving copies thereof at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; (3) by delivering a copy of the summons and of the petition to a disabled person, by serving the individual or by serving an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given; or (4) if service cannot be made in accordance with (1), (2) or (3), by leaving a copy of the summons and of the petition at the defendant's dwelling house or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail. Service by certified mail shall be addressed to an individual at the individual's dwelling house or usual place of abode and to an authorized agent at the agent's usual or designated address.

(b) *Minor.* Upon a minor, by delivering a copy of the summons and of the petition personally (1) to serving the minor and (2) also either to the minor's guardian or conservator if the minor has one within the state or to the minor's father or mother or other person having the minor's care or control or with whom such minor resides, or if service cannot be made upon any of them, then as provided by order of the judge. Service by certified mail shall be addressed to an individual at the individual's dwelling house or usual place of abode and to a corporate guardian or conservator at such guardian or conservator's usual place of business.

(c) *Incapacitated Disabled person.* Upon an incapacitated person, by delivering a copy of the summons and of the petition personally a disabled person, as defined in K.S.A. 59-3002, and amendments thereto, by serving (1) to such person's guardian, conservator or a competent adult member of such person's family with whom the person resides, or if such person is living in an institution, then to the director or chief executive officer of the institution or, if service cannot be made upon any of them, then as provided by order of the judge, and (2) unless the judge otherwise orders, also to the incapacitated the disabled person. Service by certified mail shall be addressed to a director or chief executive officer of an institution at the institution, to any other individual at the individual's dwelling house or usual place of abode, and to a corporate guardian or conservator at such guardian or conservator's usual place of business.

(d) *Governmental bodies.* (1) Upon a county, by delivering a

If service by certified mail to the individual's dwelling house or usual place of abode is refused or unclaimed, the party or party's attorney seeking service may complete service by certified mail by serving the individual at a business address after filing an affidavit stating the certified mailing to the individual at such individual's dwelling house or usual place of abode has been refused or unclaimed and a business address is known for such individual.

3/2/90
H. J. Com.
Att II 2

HOUSE BILL No. 2689

By Committee on Judiciary

1-23

AN ACT concerning civil procedure; relating to limitation of actions; amending K.S.A. 1989 Supp. 60-513 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 60-513 is hereby amended to read as follows: 60-513. (a) The following actions shall be brought within two years:

- (1) An action for trespass upon real property.
- (2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.
- (3) An action for relief on the ground of fraud, but the cause of action shall not be deemed to have accrued until the fraud is discovered.
- (4) An action for injury to the rights of another, not arising on contract, and not herein enumerated.
- (5) An action for wrongful death.
- (6) An action to recover for an ionizing radiation injury as provided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.
- (7) An action arising out of the rendering of or failure to render professional services by a health care provider, not arising on contract.

(b) Except as provided in subsection (c), the causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action, ~~or requires a scientific determination to identify the fact of the injury or its relationship to another person's wrongful conduct, then the period of limitation shall not commence until the injured party knew or should have~~

until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action.

3/2/90
H. Jud. Com.
Attachment III

1 ~~known of the fact of the injury and its relation to the adverse party's~~
2 ~~conduct.~~ ←

3 (c) A cause of action arising out of the rendering of or the failure
4 to render professional services by a health care provider shall be
5 deemed to have accrued at the time of the occurrence of the act
6 giving rise to the cause of action, unless the fact of injury is not
7 reasonably ascertainable until some time after the initial act, then
8 the period of limitation shall not commence until the fact of injury
9 becomes reasonably ascertainable to the injured party, but in no
10 event shall such an action be commenced more than four years
11 beyond the time of the act giving rise to the cause of action.

12 (d) The provisions of this section as it was constituted prior to
13 July 1, 1987, shall continue in force and effect for a period of two
14 years from that date with respect to any act giving rise to a cause
15 of action occurring prior to that date.

16 → Sec. 2. K.S.A. 1989 Supp. 60-513 is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after
18 its publication in the statute book.

The foregoing 10 year limitation though, does not apply to either (i) shorten the time to bring a "product liability claim" as defined by K.S.A. 60-3302 to a lesser period than is described in K.S.A. 60-3303; or (ii) the time to discover a disease which is latent caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and its cause have been made known to the person or at the point the person should have been aware of the disease and its cause.

(e) Any person whose claim for a latent disease was barred by this section prior to July 1, 1990 shall have until July 1, 1991 to bring such action, provided the injured person was a resident of Kansas at the time of the diagnosis of the latent disease and such disease was diagnosed prior to July 1, 1990. In the event latent disease is diagnosed on or after July 1, 1990 the amended act shall apply. It is the intent of the legislature to revive claims for the victims of latent disease who have been barred by the application of the statute in effect prior to July 1, 1990.

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H. Judd Com
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H. Gud. Com.
Attachment IV

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HOUSE BILL No. 2689

By Committee on Judiciary

1-23

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10 amending K.S.A. 1989 Supp. 60-513 and repealing the existing
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15 as follows: 60-513. (a) The following actions shall be brought within
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- 18 (2) An action for taking, detaining or injuring personal property,
19 including actions for the specific recovery thereof.
- 20 (3) An action for relief on the ground of fraud, but the cause of
21 action shall not be deemed to have accrued until the fraud is
22 discovered.
- 23 (4) An action for injury to the rights of another, not arising on
24 contract, and not herein enumerated.
- 25 (5) An action for wrongful death.
- 26 (6) An action to recover for an ionizing radiation injury as
27 provided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments
28 thereto.
- 29 (7) An action arising out of the rendering of or failure to render
30 professional services by a health care provider, not arising on
31 contract.

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33 listed in subsection (a) shall not be deemed to have accrued until
34 the act giving rise to the cause of action first causes substantial injury,
35 or, if the fact of injury is not reasonably ascertainable until some
36 time after the initial act, then the period of limitation shall not
37 commence until the fact of injury becomes reasonably
38 ascertainable to the injured party, but in no event shall an
39 action be commenced more than 10 years beyond the time of
40 the act giving rise to the cause of action, ~~or requires a scientific~~
41 ~~determination to identify the fact of the injury or its relationship to~~
42 ~~another person's wrongful conduct, then the period of limitation~~
43 ~~shall not commence until the injured party know or should have~~

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3/2/90
K. J. Quinn
Cott IV
2

1 ~~known of the fact of the injury and its relation to the adverse party's~~
2 ~~conduct.~~

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4 to render professional services by a health care provider shall be
5 deemed to have accrued at the time of the occurrence of the act
6 giving rise to the cause of action, unless the fact of injury is not
7 reasonably ascertainable until some time after the initial act, then
8 the period of limitation shall not commence until the fact of injury
9 becomes reasonably ascertainable to the injured party, but in no
10 event shall such an action be commenced more than four years
11 beyond the time of the act giving rise to the cause of action.

12 (d) The provisions of this section as it was constituted prior to
13 July 1, 1987, shall continue in force and effect for a period of two
14 years from that date with respect to any act giving rise to a cause
15 of action occurring prior to that date.

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KCCI recommendation for the first balloon above:

"The foregoing 10 year limitation though, does not apply to either (i) alter the time to bring a "product liability claim" as defined by K.S.A. 60-3302 and as procedurally prescribed in K.S.A. 60-3303; ..."

We do not intend to take a position at this time regarding the remainder of the bill or the remainder amendments.
Bob Perkins
KCCI



ED SCHAUB
Vice President,
Governmental Relations and
Corporate Communications

February 27, 1990

The Honorable Michael O'Neal
Chairman, House Judiciary Committee
House of Representatives
State House
Topeka, Kansas 66612

Dear Representative O'Neal:

As you know, a question was raised at the committee hearing last week concerning the effect of the penalties section of the Overhead Power Lines Safety Bill (HB 2673). Specifically, concerns were raised about the impact of the penalty provisions upon an employee who was simply carrying out his employer's instructions when a violation of the clearance provisions occurred. In that it has always been our intention to place the burden of compliance upon the contractors, rather than the employees, this is a change that we can readily agree to.

I would suggest that a new sentence be inserted at the end of subsection (a) of section 6 to read as follows:

". . . The provisions of this subsection shall not apply to a person who, at the time the act or acts occur which constitute a violation, is acting as an agent or employee under the direction of an individual, firm, joint venture, partnership, corporation, association, municipality or governmental unit."

This was the quickest and cleanest way that we can think of to provide an exemption for the employee who is told by his employer to operate a crane in the area of our power line without protections first having been arranged. Since they would be operating under the direction of their employer, it would be the employer who would be liable under subsection (a) of section 6 and not the employee. Of course, if they are acting on their own, either in defiance of their employer or without their employer's knowledge, then they may not be under the "direction" of their employer, and the exception would not apply.

3/2/90
H. Jud. Com.

The Honorable Michael O'Neal
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February 27, 1990

I am not aware of any other state that has actually thought this problem through to the extent that we have. If and when this bill is enacted, it will certainly serve for other states as either a model to adopt or an example to avoid.

If I can be of further assistance or if you or the committee need more information, please do not hesitate to contact me.

Sincerely,



Ed Schaub

3/2/90
H. Jud. Com

Att V



February 28, 1990

ED SCHAUB
Vice President,
Governmental Relations and
Corporate Communications

The Honorable Michael O'Neal
Chairman, House Judiciary Committee
House of Representatives
State House
Topeka, Kansas 66612

Dear Representative O'Neal:

This is in response to several questions raised by committee members during the hearing on HB 2673 (Overhead Power Line Accident Prevention Act).

One of the questions dealt with our present policy of covering, de-energizing, re-routing or otherwise making our lines safe for person to work around.

In our General Terms and Conditions for electric service, paragraph 6.07 (copy attached) provides that the Company shall charge for all materials furnished and all work done on customer's premises. However, this is limited to work done "beyond the point of delivery," which is defined as being the meter. As a practical matter, if a customer wants us to de-energize a line going into his house or place protections upon it, we will do so as a matter of courtesy, without charge. However, this applies only to such minor actions, and does not extend to any type of line relocation, raising, re-routing, etc. In such cases, we provide an estimate to the customer based on the men who would be needed (a journeyman lineman's time is priced at \$17.10/hour, including overhead and benefits), the equipment to be used (a truck goes for \$9.00/hour) and the cost of any material which is consumed. Accordingly, the bill would codify what our existing practice has been, i.e. no charge for minor types of safety protections, charges for more major activities.

The second query regarded information from other states concerning their experiences with this kind of bill. These have been less than concrete. An attorney who handles cases and claims for Arizona Public Service informs me that the incidence of their serious cases has remained about the same since 1980, when the Arizona law went into effect. However, considering that their service area and customer base have

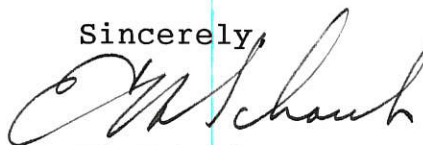
3/2/90
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The Honorable Michael O'Neal
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February 28, 1990

expanded by almost a third since that time, there has actually been a significant decrease in the incident rate per thousand customers served. Mississippi's law has only been in effect since 1988, so the people at Mississippi Power cannot even say that. However, they are having contractors call them on a daily basis, which did not happen before. Given the potential for an electric contact in any case where work is being done around a power line, this kind of preventative action surely must be considered of some benefit.

Mr. Chairman, if I can be of further assistance or if additional information is requested, please do not hesitate to call upon me.

Sincerely,



Ed Schaub

Enclosure

3/2/90
H. G. C. Comm.

Att V 4

THE STATE CORPORATION COMMISSION OF KANSAS

Index No.

THE KANSAS POWER AND LIGHT COMPANY

SCHEDULE GT&C-Electric

(Name of Issuing Utility)

Replacing Schedule GT&C-Elec Sheet 39

Entire Territory

(Territory to which schedule is applicable)

which was filed Various

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 59 of 90 Sheets

GENERAL TERMS AND CONDITIONS FOR ELECTRIC SERVICE

- 6.05 Company's Access To Customer's Premises: Company's representatives shall have free access to customer's premises for the purpose of reading the meter or inspecting the metering equipment and all other equipment relating to Company's service or for making necessary repairs or tests to its equipment, or for removing its meter or equipment.

- 6.06 Tampering With and Care of Company's Property: No one other than a Company representative or other person authorized by Company shall be permitted to repair or remove Company's meter or facilities, or any of the property of Company on or about customer's premises. Any unauthorized person tampering with Company's meter or facilities is in violation of this restriction and such tampering shall be considered cause for immediate discontinuance of service by Company. Any seals placed by Company on meters shall not be broken or disturbed by anyone other than authorized representatives of Company.

- 6.07 Charges For Work Done On Customer's Premises By Company: Except as provided in Subsection 6.02.02, Inspection and Testing of Customer's Facilities, Company shall charge for all materials furnished and for all work done on customer's premises beyond the point of delivery except if a suspected unsafe condition is being investigated. Such charges shall apply for trouble calls not occasioned by negligence on the part of Company, for repair of appliances, and any other work or service requested and authorized by customer. Such charge shall be based upon Company's existing schedule of charges. Company shall not charge for replacement or repair of equipment furnished and owned by Company on customer's premises except when repairs or replacements are caused by negligence or misuse by customer or customer's agents.

158796-U

Commission File Number.....

Issued <u>July</u> <u>14</u> <u>1989</u> Month Day Year Effective <u>JUL 17 1989</u> Month Day Year By <u>Steven L. Kitchen</u> Sr. Vice President Signature of Officer Title	FILED <u>JUL 17 1989</u> THE STATE CORPORATION COMMISSION OF KANSAS By <u>Judith M. Connell</u> Secretary 3/2/90 588 Att. V 5
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HOUSE BILL No. 2673

By Committee on Judiciary

1-19

9 AN ACT establishing the overhead power line accident prevention
10 act.

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

13 Section 1. This act may be cited and shall be known as the
14 overhead power line accident prevention act.

15 Sec. 2. As used in this act:

16 (a) "Authorized person" means:

17 (1) An employee of a public utility or an employee of a contractor
18 which has been authorized by a public utility to perform construction,
19 operation or maintenance on or near the poles or structures of any
20 utility;

21 (2) an employee of a cable television or communication services
22 company or an employee of a contractor authorized to make cable
23 television or communication service attachments; or

24 (3) an employee of the state or a county or municipality which
25 has authorized circuit construction, operation or maintenance on or
26 near the poles or structures of a public utility.

27 (b) "High voltage" means electricity in excess of 600 volts meas-
28 ured between conductors or between a conductor and the ground.

29 (c) "Overhead lines" means all electrical conductors installed
30 above ground.

31 (d) "Person" means an individual, firm, joint venture, partner-
32 ship, corporation, association, municipality or governmental unit
33 which performs or contracts to perform any function or activity upon
34 any land, building, highway or other premises in proximity to an
35 overhead line.

36 (e) "Public utility" means and includes those entities defined in
37 K.S.A. 66-104, and amendments thereto, municipally owned elec-
38 trical systems and electric cooperatives as defined in K.S.A. 17-4601
39 *et seq.*, and amendments thereto.

40 Sec. 3. Unless danger against contact with high voltage overhead
41 lines has been guarded against as provided by section 4, no person,
42 individually or through an agent or employee, shall store, operate,
43 erect, maintain, move or transport any tools, machinery, equipment,

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1 supplies or materials, within 10 feet of any high voltage overhead
2 line, or perform or require any other person to perform any function
3 or activity if at any time during the performance thereof it is rea-
4 sonably foreseeable that the person performing the function or ac-
5 tivity could move or be placed within 10 feet of any high voltage
6 overhead line.

7 Sec. 4. (a) When any person desires to carry out temporarily
8 any function or activity in closer proximity to any high voltage over-
9 head line than is permitted by this act, the person or persons re-
10 sponsible for the function or activity shall notify the public utility
11 which owns or operates the high voltage overhead line of the function
12 or activity and shall make appropriate arrangements with the public
13 utility for temporary barriers, temporary deenergization and ground-
14 ing of the conductors, temporary rerouting of electric current or
15 temporary relocating of the conductors before proceeding with any
16 function or activity which would impair the clearances required by
17 this act.

18 (b) A person or persons requesting a public utility to provide
19 temporary clearances or other safety precautions shall be responsible
20 for payment of only those costs incurred by such utility in the
21 temporary rerouting of electric current or the temporary relocating
22 of the conductors. Upon request, a public utility shall provide a
23 written costs estimate for the work needed to provide temporary
24 rerouting of electric current or temporary relocating of the conduc-
25 tors. A public utility is not required to provide such temporary
26 rerouting of electric current or the temporary relocating of the con-
27 ductors until payment of the estimated amount or a surety arrange-
28 ment in lieu of advanced payment has been made. Unless otherwise
29 agreed to, or unless circumstances require a longer period of time
30 before work commences in order to assure continuity of service to
31 electric customers, a public utility shall commence work on such
32 temporary rerouting of electric current or the temporary relocating
33 of the conductors within three working days after payment or a surety
34 arrangement in lieu of advanced payment has been made, and shall
35 commence work on such temporary barriers or temporary deener-
36 gization and grounding of the conductors as may be appropriate,
37 within three working days after such notification has been made in
38 accordance with subsection (a) of section 4.

39 (c) If a person requesting a public utility to provide temporary
40 rerouting of electric current or the temporary relocating of the con-
41 ductors disagrees with the reasonableness of the written costs esti-
42 mate or the description of the work to be performed, the following
43 options are available to such person:

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1 (1) Such person under protest may pay the utility for the work
2 in accordance with the written cost estimate, but shall be entitled
3 to seek recovery of all or any part of the money so paid in an
4 arbitration proceeding as hereinafter provided; or

5 (2) prior to directing the work to be performed, the person or
6 persons may submit to binding arbitration, as hereinafter provided,
7 to resolve the issue of the reasonableness of the written cost estimate
8 or the description or extent of the work to be performed by the
9 public utility under such estimate.

10 (d) Disputes submitted to binding arbitration under this section
11 shall be submitted in accordance with the procedures set forth in
12 K.S.A. 5-401 *et seq.*, and amendments thereto. The decision of the
13 arbitrator or arbitrators as to the reasonableness of the costs or the
14 necessity of the work to be performed shall be final and binding
15 upon the parties.

16 Sec. 5. Each person, individually or through an agent or em-
17 ployee, or as an agent or employee, who operates any crane, derrick,
18 power shovel, drilling rig, hoisting equipment, or similar apparatus,
19 any part of which is capable of operating in closer proximity to any
20 high voltage overhead line than is permitted by this act, shall post
21 and maintain in plain view of the operator thereof, a durable warning
22 sign, legible at 12 feet, stating:

23 "Unlawful to operate this equipment within 10 feet of high
24 voltage overhead lines unless protected from contact danger."
25 Each day's failure to post or maintain such signs shall constitute a
26 separate violation.

7 27 Sec. 6. (a) Every person as defined herein who violates any of
28 the provisions of this act may be subject to a civil penalty in a sum-
29 set by the court of not more than \$1,000 for each violation. Actions
30 to recover civil penalties under this act shall be brought by the
31 county or district attorney for the county in which the violation
32 occurred. Civil penalties sued for and recovered by the county or
33 district attorney shall be paid into the general fund of the county
34 where the proceedings were instigated.

35 (b) In a civil action in a court of this state when it is shown by
36 competent evidence that damage to any high voltage overhead line
37 owned or operated by a public utility, a personal injury or other
38 damages occurred as a result of a violation of this act, there shall
39 be a rebuttable presumption that the person violating the provisions
40 of this act was negligent as a result of such violation.

41 (f) Nothing in this act is intended to limit or modify the pro-
42 visions of:

43 (1) K.S.A. 60-258a, and amendments thereto; or

Sec. 6. (a) Public utilities shall post and maintain a durable warning sign, legible at three feet, on each pole, transformer or other high voltage overhead equipment owned by such public utility, not included in section 5, stating:

(1) The identifying hazards of high voltage overhead lines and warning the public of the consequences of overhead line contact;

(2) the requirements of sections 3 and 4; &

(3) a telephone number to call to make requests as provided in section 4.

(c) If the public utility violates this act or the national electrical safety code, it shall be conclusively presumed that such public utility failed to exercise the highest degree of care and there shall be a rebuttable presumption that such public utility was negligent as a result of such violation.

1 (2) the national electrical safety code, which would otherwise be
2 applicable.

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3 Sec. 7. This act does not apply to:

4 (a) Construction, operation or maintenance by an authorized per-
5 son as defined herein;

6 (b) highway vehicles or agricultural equipment which in normal
7 use may incidentally pass within the clearances prescribed by this
8 act;

9 (c) the operation or maintenance of any equipment traveling or
10 moving upon fixed rails;

11 (d) governmental entities responding to an emergency situation;
12 or

13 (e) moving buildings or structures on streets, alleys, roads and
14 highways pursuant to K.S.A. 17-1914 *et seq.*, and amendments
15 thereto.

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16 Sec. 8. If any provision of this act or the application thereof to
17 any person or circumstances is held invalid, the invalidity does not
18 affect other provisions or applications of this act which can be given
19 effect without the invalid provision or application, and to this end
20 the provisions of this act are severable.

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21 Sec. 9. This act shall take effect and be in force from and after
22 its publication in the statute book.

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