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AMERICA'S SOLID WASTE INDUSTRY



National Solid Wastes Management Association

To: Senate Transportation Committee
From: Patrick Vogelsberg, NSWMA – KS Chapter
Date: January 31, 2012

Re: SB 298; Penalties for violating size and weight laws, exceptions.

Honorable Chairman Umbarger and members of the committee:

Thank you for the opportunity to address the Senate Transportation Committee today. My name is Patrick Vogelsberg and I am here on behalf of the Kansas Chapter of the National Solid Waste Management Association to testify in support of SB 298. NSWMA is a trade association representing for-profit companies that provide solid, hazardous and medical waste collection, recycling and disposal services.

The goal of SB 298 is to simply clarify the existing exception for garbage trucks that is already in place in K.S.A. 8-1901(e). The need for SB 298 arises out of a recent unpublished Kansas Court of Appeals opinion, *State v. Eichenberger*, No. 104,045 (Kan. App. May 27, 2011). In *Eichenberger*, the Kansas Court of Appeals analyzed the provisions of K.S.A. 8-1901, which provides the sets the criminal penalties or violating the size and weight regulations, and also provides exceptions. The exception is found at K.S.A. 8-1901(e):

Except on highways designated as part of the national system of interstate defense highways, the gross weight limitation prescribed by article 19 of chapter 8 of Kansas Statutes Annotated on any axle or tandem, triple or quad axles shall not apply to: (1) Trucks specifically designed and equipped and used exclusively for garbage, refuse or solid waste disposal operations when loaded with garbage, refuse or waste; or (2) trucks mounted with a fertilizer spreader used or manufactured principally to spread animal dung, except that this paragraph (2) shall not apply to truck tractors so equipped. *Except that such trucks under this subsection shall not exceed the maximum gross weight limitations contained in the table in K.S.A. 8-1909, and amendments thereto.*

As indicated in K.S.A. 8-1901(e) there is a the general exception that applies to trucks that transport solid waste, fertilize trucks and manure spreaders. However, the last sentence states that these trucks shall not exceed the *maximum* gross weight limitations contained in the table in K.S.A. 8-1909.

This last sentence is the language that NSWMA feels the Kansas Court of Appeals did not give due regard to legislative intent in that they interpreted this to apply the table in K.S.A. 8-1909(a) in its entirety – restrictions based on number and distance between axles. It is NSWMA's position that this was not the original legislative intent. Rather, trucks contemplated under the exception are restricted to

the maximum gross weight limitations of the table for each axle configuration regardless of the distance between those axles.

We respectfully disagree with the majority's interpretation of K.S.A. 8-1901(e). The *Eichenberger* majority's statutory construction provides no meaningful exemption or exception for garbage trucks to the gross weight limitations contained within the entire statutory scheme. To the contrary, we believe the legislature intended to exempt garbage trucks from any gross weight limitations imposed per axle and to restrict such trucks to a gross weight limitation based on the basic configuration of the truck. Simply put, neither "per axle" nor the "distance between axles" weight limitations apply to garbage trucks, but such trucks cannot exceed the gross weight limitations provided in the table for their axle configuration. Under this interpretation, garbage trucks are limited to the specified-table maximum gross weights without regard to either the per axle restriction or distance between axles. Therefore, a garbage truck with two axles would have a maximum gross weight limit of 40,000 pounds and garbage truck with three axles would have a maximum gross weight limit of 60,000 pounds.

However, rather than providing further language in 8-1901(e) clarifying how the table in 8-1909(a) should be used to restrict the gross weight limits of garbage trucks, a simple alternative would be to state that the trucks under 8-1901(e) shall not exceed 60,000 pounds for three axles or 40,000 pounds for two axles, regardless of width spacing between axles.

The majority in *Eichenberger* acknowledge that, "the common practice of the lower courts in this state may well be to apply the 60,000-pound limit [regarding a three axle truck]." The majority went on to state that, "[i]t is for the legislature to modify what we believe to be the stated intent of the relevant statutes." NSWMA, through SB 298 seeks to modify the Court's of Appeals belief as to the stated intent of K.S.A. 8-1901(e) by clearly stating what the gross weight limits are for garbage trucks.

Of course, NSWMA is mindful that any changes to the size and weight laws of article 19 may have broader implications – namely, federal highway funding. That is why NSWMA approached the Kansas Motor Carriers Association and the Kansas Department of Transportation, seeking input and suggestions to how best to amend the language of K.S.A. 8-1901(e) in light of *Eichenberger*. The language that is in SB 298 is the language suggested by KDOT legal staff.

SB 298 does not expand the current exception under K.S.A. 8-1901(e). Rather, SB 298 will provide the necessary clarification of the exception in K.S.A. 8-1901(e) for Kansas courts and return to a pre-*Eichenberger* interpretation of the statute.

NSWMA respectfully ask the committee to consider and support SB 298. I am happy to answer any questions.

Respectfully,

Patrick Vogelsberg
NSWMA – KS Chapter