

Christopher E. Cross, State Director USIC LLC

2/8/2023

4601 W 139th Street Leawood, KS 66224

303-945-9824

House Committee Energy, Utilities and Communications

State Capitol

Topeka, KS 66612

House Committee Members,

I am writing about the House Bill 2226 (HB2226), and the foreseen/unforeseen ramifications of changing the "dig" statutes in Kansas. Although I was not given a copy of the actual letter sent to the committee chairman explaining the reason for changes, I have reviewed the draft letter provided to me which I believe to be somewhat the same. After reviewing the letter, I believe there are many points that need to be presented. The main areas include what confines the fluid process of the dig laws, the true cost to the excavators/utilities and the increased risk to the Public.

USIC, which is the largest locating company in Kansas, has concerns of the proposal to increase the "life of a ticket" from 15 days to 20 days. We are also very concerned in the proposal to make it an KCC decision through committee to increase these days without elected Legislative Committee oversight.

To my knowledge, there has been no data given to the committee that will support the change from 15 to 20 days. The effect of these changes will have on public safety and the outcome of such changes. We are also concerned with turning over the Public Safety over to the KCC, without legislative oversight under KSA 66-1815 which is an ACT to prevent damage.

Public Safety: Gravely diminished by such changes.

- Prior to this proposal being sent to your committee, the main reason for these requested changes were to improve and prevent damages under the pretenses of the Kansas Damage Prevention Act, which directly relates to Public Safety. After explaining that this proposal will increase damages to customer facilities, the committee has pivoted to cost savings as the reason. Cost is important to us all but at what cost?

- The KCC committee members have used the examples of other states that have higher "Ticket Life" than Kansas. The one state that is always used and in the letter to the committee, is Missouri. Missouri has no "life of ticket" requirements. Some believe this is the direction (increased life of ticket) Kansas should go but we stop asking the important and critical questions. How has that decision impacted the Public Safety? - The number of actual investigations from damages in Missouri (no matter who caused them) is approximately 10 times that of Kansas. MISSOURI has 22587 damages investigated by USIC in 2022 alone. Over 85% of those damages investigated are for other entities than USIC. We have investigated just over 4000 in the state of Kansas. The average cost give or take is \$2500. In MO and

\$2000 in Kansas. Every damage can increase the risk to the public. Kansas is about protecting the public from danger not adding risk to the public.

- Most states above 15 days has more damage investigations than Kansas. Every state that has less than 15 days, has less damages per year. This data is not a coincidence. It is a direct correlation between Life of the Ticket” and damages which puts risk to the public.

- In all recent KCC/811 meetings and advisory board meetings the request was to increase the days to 30. The actual statute proposal was 30 and now written requesting 20. We believe 30 days is the intent of the KCC if HB 2226 passes, hence the reason for the KCC to request control of the future time limits under KSA 66-1815.

- 66-1815. Kansas underground utility damage prevention act; rules and regulations.

-(a) The state corporation commission shall have full power and authority to adopt all necessary rules and regulations for carrying out the provisions of K.S.A. 66-1801 through 66-1814, and amendments thereto.

- (b) This section shall be part of and supplemental to the Kansas underground utility damage prevention act.

- As KCC is using the backdrop of KSA 66-1815 to not only increase the “Life of a Ticket” but to also take control of the statute in further increases through committee process and my understanding, not elected officials.

- The Kansas underground utility “DAMAGE PREVENTION ACT”.

O Not only do these changes not represent that initiative it will in effect increase the damages, and not preventing damages.

Data being used to drive the request for changes:

- The 811 system publishes the data monthly and with all the data presently collected, it does not support a change to the statute or no change to the statute. The data need to understand the sweeping statute changes does not exist in a usable form.

- Updates are only entered by one entity. The excavators update tickets due to inadequate planning, tickets that are too long in scope which can't be completed by them within 15 days, or the paint has been destroyed. All three of these causes are all managed by the excavator, and there is no data provided to support that a change in “life of Ticket” will decrease the amount of updates. We believe it will increase the number of updates.

-The first set of data below is directly from 811 and identifies “updates”. All updates are done by the contractor/excavator. The second set of data below is straight from 811 and the number of “non-responses” is 2%. Non-responses are directly related to locating struggles, which we accept and work towards improving. We also have no data to define why 2% or who/company driving the NR.



KS Statewide, Johnson and Sedgwick County Volume vs. Non-Response													
Month	Billable Incoming Locate Requests	# of Updates	Updates as % of Total Incoming	Statewide			Johnson County			Sedgwick County			
				Total Incoming Locates	Total Non-Responses	% of Non-Responses	Total Incoming Locates	Total Non-Responses	% of Non-Responses	Total Incoming Locates	Total Non-Responses	% of Non-Responses	
January 2022	42,741	13,920	32.57%	59,324	1,924	3.24%	15,134	1,062	7.02%	10,481	124	1.18%	
February	41,660	13,757	33.02%	57,171	1,728	3.02%	13,540	904	6.68%	10,864	134	1.23%	
March	58,153	16,161	27.79%	82,416	1,165	1.41%	11,626	624	5.37%	9,882	95	0.95%	
April	60,719	14,647	24.12%	46,533	1,110	2.39%	9,879	621	6.29%	9,282	77	0.83%	
May	58,640	17,110	29.18%	<b>660,320</b>	<b>14,629</b>	<b>2.22%</b>	<b>184,114</b>	<b>7,273</b>	<b>4.72%</b>	<b>122,431</b>	<b>1,739</b>	<b>1.42%</b>	
June	63,830	18,323	28.71%	January 2022	42,741	706	1.65%	8,608	321	3.73%	9,718	95	0.98%
July	55,655	15,694	28.20%	February	41,660	628	1.51%	8,664	324	3.74%	8,551	39	0.46%
August	64,614	17,821	27.58%	March	58,153	1,005	1.73%	12,762	513	4.02%	11,117	79	0.71%
September	59,724	15,498	25.95%	April	60,719	1,463	2.41%	14,895	850	5.77%	11,248	77	0.68%
October	57,822	15,137	26.18%	May	58,640	1,706	2.91%	14,906	991	6.65%	11,283	79	0.70%
November	51,084	15,364	30.08%	June	63,830	2,106	3.30%	16,252	1,453	8.94%	12,301	83	0.67%
December	43,022	14,357	33.37%	July	55,655	1,773	3.19%	13,710	1,105	8.06%	10,078	88	0.87%
Year-End	<b>657,664</b>	<b>187,789</b>	<b>28.55%</b>	August	64,614	1,435	2.22%	15,362	855	5.57%	12,388	72	0.58%
January 2023	48,856	14,118	28.90%	September	59,724	1,291	2.16%	14,560	604	4.15%	11,759	81	0.69%
				October	57,822	1,205	2.08%	13,946	670	4.80%	11,193	84	0.75%
				November	51,084	1,154	2.26%	11,336	676	5.96%	10,014	67	0.67%
				December	43,022	1,035	2.41%	8,708	685	7.79%	9,186	57	0.62%
				Year-End	<b>657,664</b>	<b>16,607</b>	<b>2.36%</b>	<b>183,799</b>	<b>9,057</b>	<b>5.89%</b>	<b>128,876</b>	<b>901</b>	<b>0.70%</b>
				January 2023	48,856	974	1.99%	9,862	546	5.54%	9,823	48	0.49%
				Year-to-Date	<b>48,856</b>	<b>974</b>	<b>1.99%</b>	<b>9,862</b>	<b>546</b>	<b>5.54%</b>	<b>9,823</b>	<b>48</b>	<b>0.49%</b>

The third area that I would like to discuss is what the reality will be if the “life of the ticket” is changed.

- Since, Missouri is quoted by the KCC to compare to a state with more time, just to use another state as an example. KCC has stated that cost will go down, excavators will not be leaning on shovels, but let’s even go further - there is not only labor, but fuel, rental equipment and lost opportunity to excavators.

- One easy way this is tracked by USIC and all locator companies and that is what we call “Past Dues” (PDs). PDs are tickets that have not been located within the 2 days given by the statutes. As the PDs climb so does the wait time, rental cost, fuel cost, and labor cost - hence loss of money and revenue to the excavators.

- Missouri daily PDs in the height of dig Season was over 4000 tickets.

- Kansas PDs on the same week, same day was 294.

- The only standard difference between the states is the “Life of a Ticket”. Of course, there may be other factors but it is just to give an example.

- If the tickets are painted within 2 days by statute and the excavator does not dig until day 19/20, the marks will not be there, and this will only cause more updates.

Solutions: Many solutions to the “update” issue.

- Use Data to Fix the Problem.

- o Who or what company is causing all the updates.
- o Is it one company, a few or all.
- o What plans are there to reduce this abuse.
- o How can they be trained to do their planning differently?
- o Limit updates to 2/5/10/30?

o (f) No person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.

o It is worded in such a manner that leaves it open ended. Set an amount of actual legal updates to a ticket.

o It is generally accepted that the ticket life restriction was necessary because the temporary paint marks or flags showing the location of the line could not be expected to remain in place longer than two weeks. If an excavator is unable to complete the proposed work in 15 days, they can call in an update, but the law prohibits “excessive” updates. Paint is still paint.

- What action items are presently in place? What has been tried in the past?
- Must dig requirement - excavators must dig within 10 days of a legal ticket or the ticket is null and void. Make it a statute to fix the problem.
- Only tickets marked on cement or pavement can be dug on legally for 20 days. The paint put on the ground today will not be visible to any contractor at 20 days or greater.

In closing, we believe that the statute changes are NOT in the best interest of the Public, the customers nor the excavators. The data provided demonstrates, that we don't have any viable data to make such sweeping changes. KSA 66-1815 – Damage Prevention Act is an act to prevent damages and not increase damages. The outcome will devastate the 811 fluidities as it has been shown to do in other states, and there are simpler and easier options that will improve the safety to the Public, all of which will reduce cost to the Excavators/Utilities – hence covering the concern of the KCC. How can we change a statute with no data to support the changes.

Thank you for your time and patience with this matter. Public Safety is the number one concern for all of us.

Christopher E. Cross

State Director, USIC Kansas

303-945-9824