

LEGISLATIVE BILL 930

Approved by the Governor April 10, 2014

Introduced by Watermeier, 1.

FOR AN ACT relating to the One-Call Notification System Act; to amend sections 76-2323, 76-2324, and 76-2325, Reissue Revised Statutes of Nebraska, and section 76-2301, Revised Statutes Supplement, 2013; to require the presence of an operator at certain excavations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-2301, Revised Statutes Supplement, 2013, is amended to read:

76-2301 Sections 76-2301 to 76-2330 and section 2 of this act shall be known and may be cited as the One-Call Notification System Act.

Sec. 2. Unless otherwise agreed by the operator and excavator in writing, no excavation shall be performed within twenty-five feet of an underground natural gas transmission line as defined in 49 C.F.R. 192.3 unless a representative of the operator of the underground natural gas transmission line is present at the planned excavation area. If the representative of the operator fails to appear at the proposed excavation area at the time work is scheduled to commence, the excavator shall notify the operator that the representative failed to appear and excavation operations can begin if reasonable precautions are taken to protect the underground facility. This section does not prohibit an operator from either voluntarily having its representative present during excavation or from entering into an agreement voluntarily with an excavator that allows an operator representative to be present during excavation.

Sec. 3. Section 76-2323, Reissue Revised Statutes of Nebraska, is amended to read:

76-2323 (1) Upon receipt of the information contained in the notice pursuant to section 76-2321, an operator shall advise the excavator of the approximate location of underground facilities in the area of the proposed excavation by marking or identifying the location of the underground facilities with stakes, flags, paint, or any other clearly identifiable marking or reference point and shall indicate if the underground facilities are subject to section 2 of this act. The location of the underground facility given by the operator shall be within a strip of land eighteen inches on either side of the marking or identification plus one-half of the width of the underground facility. If in the opinion of the operator the precise location of a facility cannot be determined and marked as required, the operator shall provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time. The location shall be marked or identified using color standards prescribed by the center. The operator shall respond no later than two business days after receipt of the information in the notice or at a time mutually agreed to by the parties.

(2) The marking or identification shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the excavation will continue for longer than five business days, the operator shall remark or reidentify the location of the underground facility upon the request of the excavator. The request for remarking or reidentification shall be made through the center.

(3) An operator who determines that it does not have any underground facility located in the area of the proposed excavation shall notify the excavator of the determination prior to the date of commencement of the excavation.

Sec. 4. Section 76-2324, Reissue Revised Statutes of Nebraska, is amended to read:

76-2324 An excavator who fails to give notice of an excavation pursuant to section 76-2321 or who fails to comply with section 2 of this act and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 76-2323. An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility that is operated by the excavator shall not be in violation of the One-Call Notification System Act.

In addition to any liability provided in this section an operator of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.

Sec. 5. Section 76-2325, Reissue Revised Statutes of Nebraska, is amended to read:

76-2325 Any person who violates the provisions of section 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, or 76-2330 or section 2 of this act shall be subject to a civil penalty as follows:

(1) For a violation related to a gas or hazardous liquid underground pipeline facility, an amount not to exceed ten thousand dollars for each violation for each day the violation persists, up to a maximum of five hundred thousand dollars; and

(2) For a violation related to any other underground facility, an amount not to exceed five hundred dollars for each day the violation persists, up to a maximum of five thousand dollars.

An action to recover a civil penalty shall be brought by the Attorney General or a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed. All penalties shall be ~~handled and distributed pursuant to~~ remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 6. Original sections 76-2323, 76-2324, and 76-2325, Reissue Revised Statutes of Nebraska, and section 76-2301, Revised Statutes Supplement, 2013, are repealed.