

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 930
Final Reading

Introduced by Watermeier, 1.

Read first time January 15, 2014

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the One-Call Notification System Act; to amend
2 sections 76-2323, 76-2324, and 76-2325, Reissue Revised
3 Statutes of Nebraska, and section 76-2301, Revised
4 Statutes Supplement, 2013; to require the presence of an
5 operator at certain excavations; to harmonize provisions;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-2301, Revised Statutes Supplement,
2 2013, is amended to read:

3 76-2301 Sections 76-2301 to 76-2330 and section 2 of this
4 act shall be known and may be cited as the One-Call Notification
5 System Act.

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

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

22 76-2323 (1) Upon receipt of the information contained in
23 the notice pursuant to section 76-2321, an operator shall advise the
24 excavator of the approximate location of underground facilities in
25 the area of the proposed excavation by marking or identifying the

1 location of the underground facilities with stakes, flags, paint, or
2 any other clearly identifiable marking or reference point and shall
3 indicate if the underground facilities are subject to section 2 of
4 this act. The location of the underground facility given by the
5 operator shall be within a strip of land eighteen inches on either
6 side of the marking or identification plus one-half of the width of
7 the underground facility. If in the opinion of the operator the
8 precise location of a facility cannot be determined and marked as
9 required, the operator shall provide all pertinent information and
10 field locating assistance to the excavator at a mutually agreed to
11 time. The location shall be marked or identified using color
12 standards prescribed by the center. The operator shall respond no
13 later than two business days after receipt of the information in the
14 notice or at a time mutually agreed to by the parties.

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

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

1 commencement of the excavation.

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

4 76-2324 An excavator who fails to give notice of an
5 excavation pursuant to section 76-2321 or who fails to comply with
6 section 2 of this act and who damages an underground facility by such
7 excavation shall be strictly liable to the operator of the
8 underground facility for the cost of all repairs to the underground
9 facility. An excavator who gives the notice and who damages an
10 underground facility shall be liable to the operator for the cost of
11 all repairs to the underground facility unless the damage to the
12 underground facility was due to the operator's failure to comply with
13 section 76-2323. An excavator who fails to give notice of an
14 excavation pursuant to section 76-2321 and who damages an underground
15 facility that is operated by the excavator shall not be in violation
16 of the One-Call Notification System Act.

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

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

23 76-2325 Any person who violates the provisions of section
24 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, or 76-2330 or section 2
25 of this act shall be subject to a civil penalty as follows:

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

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

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

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