

AMENDMENTS TO LB462

Introduced by Transportation and Telecommunications.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 76-2301, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 76-2301 Sections 76-2301 to 76-2331 and sections 4, 6, 8, 9, 10, 15,
6 and 16 of this act shall be known and may be cited as the One-Call
7 Notification System Act.

8 Sec. 2. Section 76-2303, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 76-2303 For purposes of the One-Call Notification System Act, the
11 definitions found in sections 76-2303.01 to 76-2317 and sections 4 and 6
12 of this act shall be used.

13 Sec. 3. Section 76-2305, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 76-2305 Center means a call shall mean the statewide one call
16 notification center which shall have as its principal purpose the
17 statewide receipt and dissemination to participating operators of
18 information on a fair and uniform basis concerning intended excavations
19 by excavators in areas where operators have underground facilities.

20 Sec. 4. Locator means a person who identifies and marks underground
21 facilities for an operator, including a contractor who performs such
22 location services for an operator.

23 Sec. 5. Section 76-2315, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 76-2315 Person means shall mean an individual, partnership, limited
26 liability company, association, municipality, state, county, political
27 subdivision, utility, joint venture, or corporation and shall include the

1 employer, employee, or contractor of an individual.

2 Sec. 6. Ticket means the compilation of data received by the center
3 in the notice of excavation and the facility locations provided to the
4 center and which is assigned a unique identifying number.

5 Sec. 7. Section 76-2319, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 76-2319 (1) The center shall be governed by a board of directors who
8 shall oversee operation of the center pursuant to rules and regulations
9 adopted and promulgated by the State Fire Marshal to carry out the One-
10 Call Notification System Act. The board of directors shall have the
11 authority to propose rules and regulations which may be adopted and
12 promulgated pursuant to this section and have such other authority as
13 provided by rules and regulations adopted and promulgated by the State
14 Fire Marshal that are not inconsistent with the One-Call Notification
15 System Act.

16 (2) The board of directors shall also establish a competitive
17 bidding procedure to select a vendor to provide the notification service,
18 establish a procedure by which members of the center share the costs of
19 the center on a fair, reasonable, and nondiscriminatory basis, and do all
20 other things necessary to implement the purpose of the center. Any
21 agreement between the center and a vendor for the notification service
22 may be modified from time to time by the board of directors, and any
23 agreement shall be reviewed by the board of directors at least once every
24 three years, with an opportunity to receive new bids if desired by the
25 board of directors.

26 (3) ~~(2)~~ The rules and regulations adopted and promulgated by the
27 State Fire Marshal to carry out subsection (2) of this section may
28 provide for:

29 (a) Any requirements necessary to comply with United States
30 Department of Transportation programs;

31 (b) The qualifications, appointment, retention, and composition of

1 the board of directors; and

2 (c) Best practices for the marking, location, and notification of
3 proposed excavations which shall govern the center, excavators, and
4 operators of underground facilities.

5 ~~(4)~~ ~~(3)~~ Any rule or regulation adopted and promulgated by the State
6 Fire Marshal pursuant to subdivision ~~(3)(c)~~ ~~(2)(c)~~ of this section shall
7 originate with the board of directors.

8 Sec. 8. Any locator acting as a contractor for an operator to
9 perform location services shall be trained in locator standards and
10 practices applicable to the industry. The board may review locator
11 training materials provided by operators, locators, and excavators and
12 may make recommendations regarding best practices for locators, if deemed
13 appropriate.

14 Sec. 9. Notwithstanding any other provision of the One-Call
15 Notification System Act, any plastic or nonmetallic underground
16 facilities installed underground on or after January 1, 2021, shall be
17 installed in such a manner as to be locatable, either by mapping or by
18 use of tracer wire, by the operator for purposes of the act.

19 Sec. 10. The board of directors shall assess the effectiveness of
20 enforcement programs, enforcement actions, and its damage prevention and
21 public awareness programs and make a report to the Governor and the
22 Legislature no later than December 1, 2021, and by December 1 every odd-
23 numbered year thereafter. The report to the Legislature shall be made
24 electronically.

25 Sec. 11. Section 76-2322, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 76-2322 An excavator shall serve notice of intent to excavate upon
28 the center by submitting a locate request using a method provided by the
29 center. The center shall inform the excavator of all operators to whom
30 such notice will be transmitted and shall promptly transmit such notice
31 to every operator having an underground facility in the area of intended

1 excavation. The notice shall be transmitted to operators and excavators
2 as a ticket. The center shall assign an identification number to each
3 notice received, which number shall be evidenced on the ticket.

4 Sec. 12. Section 76-2323, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 76-2323 (1) Upon receipt of the information contained in the notice
7 pursuant to section 76-2321, an operator shall advise the excavator of
8 the approximate location of underground facilities in the area of the
9 proposed excavation by marking or identifying the location of the
10 underground facilities with stakes, flags, paint, or any other clearly
11 identifiable marking or reference point and shall indicate if the
12 underground facilities are subject to section 76-2331. The location of
13 the underground facility given by the operator shall be within a strip of
14 land eighteen inches on either side of the marking or identification plus
15 one-half of the width of the underground facility. If in the opinion of
16 the operator the precise location of a facility cannot be determined and
17 marked as required, the operator shall provide all pertinent information
18 and field locating assistance to the excavator at a mutually agreed to
19 time. The location shall be marked or identified using color standards
20 prescribed by the center. The operator shall respond no later than two
21 business days after receipt of the information in the notice or at a time
22 mutually agreed to by the parties.

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

30 (3) An operator who determines that such operator ~~it~~ does not have
31 any underground facility located in the area of the proposed excavation

1 shall notify the center excavator of the determination prior to the date
2 of commencement of the excavation, or prior to two full business days
3 after transmittal of the ticket, whichever occurs sooner. All ticket
4 responses made under this subsection shall be transmitted to the operator
5 by the center.

6 Sec. 13. Section 76-2324, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 76-2324 An excavator who fails to give notice of an excavation
9 pursuant to section 76-2321 or who fails to comply with section 76-2331
10 and who damages an underground facility by such excavation shall be
11 strictly liable to the operator of the underground facility for the cost
12 of all repairs to the underground facility. An excavator who gives the
13 notice and who damages an underground facility shall be liable to the
14 operator for the cost of all repairs to the underground facility unless
15 the damage to the underground facility was due to the operator's failure
16 to comply with section 76-2323. An operator who fails to comply with
17 section 76-2323 shall be liable to the excavator for actual damages
18 caused by such failure. An excavator who fails to give notice of an
19 excavation pursuant to section 76-2321 and who damages an underground
20 facility that is operated by the excavator shall not be in violation of
21 the One-Call Notification System Act.

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

25 Sec. 14. Section 76-2325, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 76-2325 (1) Any person who violates the provisions of section
28 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or
29 section 8 or 9 of this act shall be subject to a civil penalty as
30 follows:

31 (a) (1) For a violation by an excavator or an operator related to a

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

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

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

21 Sec. 15. The Attorney General shall make an annual report to the
22 Legislature, the State Fire Marshal, and the board by each March 15 on
23 the number of complaints filed and the number of such complaints
24 prosecuted under section 76-2325 during the previous calendar year. The
25 report to the Legislature shall be made electronically.

26 Sec. 16. The State Fire Marshal may, by rule and regulation, define
27 occurrences relating to damage of an underground facility that creates an
28 emergency condition that requires an excavator to immediately notify an
29 operator or a locator, if applicable, and the center regarding the
30 location and extent of damage to an underground facility.

31 Sec. 17. Section 86-101, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 86-101 Sections 86-101 to 86-165 and sections 19 and 20 of this act
3 shall be known and may be cited as the Nebraska Telecommunications
4 Regulation Act.

5 Sec. 18. Section 86-103, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 86-103 For purposes of the Nebraska Telecommunications Regulation
8 Act, unless the context otherwise requires, the definitions found in
9 sections 86-103.01 to 86-121 and sections 19 and 20 of this act apply.

10 Sec. 19. Internet-protocol-enabled service or IP-enabled service
11 means any service, capability, functionality, or application provided
12 using Internet protocol, or any successor protocol, that enables a
13 service user to send or receive a communication in Internet protocol
14 format, including, but not limited to, voice, data, or video.

15 Sec. 20. Voice over Internet protocol service means an
16 interconnected voice over Internet protocol service as defined in 47
17 C.F.R. part 9, as such regulations existed on January 1, 2019.

18 Sec. 21. Section 86-124, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 86-124 (1) The commission shall not regulate the following:

21 (a) ~~(1)~~ One-way broadcast or cable television transmission of
22 television or radio signals; ~~and~~

23 (b) ~~(2)~~ Mobile radio services, radio paging services, and wireless
24 telecommunications service; ~~-~~

25 (c) Interexchange services; and

26 (d) Internet-protocol-enabled service and voice over Internet
27 protocol service, including rates, service or contract terms, conditions,
28 or requirements for entry for such service.

29 (2) This section shall not affect or modify:

30 (a) The enforcement of criminal or civil laws, including, but not
31 limited to, laws concerning consumer protection and unfair or deceptive

1 trade practices which apply generally to the conduct of business;

2 (b)(i) Any entity's obligations or rights or commission authority
3 under section 86-122 and under 47 U.S.C. 251 and 252, as such sections
4 existed on January 1, 2019, and (ii) any carrier-to-carrier tariff rates,
5 service quality standards, interconnection agreements, or other
6 obligations for which the commission has jurisdiction under state or
7 federal law;

8 (c) Any requirement to contribute to any fund administered by the
9 commission authorized by the Enhanced Wireless 911 Services Act or the
10 Nebraska Telecommunications Universal Service Fund Act;

11 (d) Any commission jurisdiction over intrastate switched access
12 rates, terms, and conditions, including the resolution of disputes
13 arising from, and implementation of federal and state law with respect
14 to, intercarrier compensation;

15 (e) The eligibility and requirements for the receipt of funds from
16 the Nebraska Telecommunications Universal Service Fund and the rules,
17 regulations, and orders under the Nebraska Telecommunications Universal
18 Service Fund Act or the receipt of funds from the federal universal
19 service fund, regardless of the unregulated status of the provider's
20 service under this section; and

21 (f) Any entity's rights and obligations with respect to (i)
22 registration under section 86-125, (ii) the use of public streets, roads,
23 highways, and rights-of-way, or (iii) a certificate of public convenience
24 and necessity or a permit.

25 Sec. 22. Section 86-144, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 86-144 Telecommunications ~~(1)(a) Except as provided in subdivision~~
28 ~~(b) of this subsection, in an exchange in which local competition does~~
29 ~~not exist, telecommunications companies shall file rate lists which, for~~
30 ~~all telecommunications service. The rate lists except for basic local~~
31 ~~exchange rates, shall be effective after ten days' notice to the~~

1 ~~commission.(b) Notwithstanding any other provision of Chapter 86, a~~
2 ~~telecommunications company shall not be required to file rate lists,~~
3 ~~tariffs, or contracts for any telecommunications service, including local~~
4 ~~exchange and interexchange services, provided as a business service. Upon~~
5 written notice to the commission, a telecommunications company may
6 withdraw any rate list, tariff, or contract not required to be filed
7 under this section subdivision if the telecommunications company posts
8 the rates, terms, and conditions of its telecommunications service on the
9 company's web site.

10 ~~(2) In an exchange in which local competition does not exist, basic~~
11 ~~local exchange rates may be increased by a telecommunications company~~
12 ~~only after ninety days' notice to all affected subscribers. Such notice~~
13 ~~of increase shall include (a) the reasons for the rate increase, (b) a~~
14 ~~description of the affected telecommunications service, (c) an~~
15 ~~explanation of the right of the subscriber to petition the commission for~~
16 ~~a public hearing on the rate increase, (d) a list of exchanges which are~~
17 ~~affected by the proposed rate increase, and (e) the dates, times, and~~
18 ~~places for the public informational meetings required by this section.~~

19 ~~(3) A telecommunications company which proposes to increase its~~
20 ~~basic local exchange rates shall hold at least one public informational~~
21 ~~meeting in each public service commissioner district as established by~~
22 ~~section 75-101.01 in which there is an exchange affected by the proposed~~
23 ~~rate increase.~~

24 Sec. 23. Original sections 76-2301, 76-2303, 76-2305, 76-2315,
25 76-2319, 76-2322, 76-2323, 76-2324, 76-2325, 86-101, 86-103, 86-124, and
26 86-144, Reissue Revised Statutes of Nebraska, are repealed.

27 Sec. 24. The following section is outright repealed: Section
28 76-2316, Reissue Revised Statutes of Nebraska.