

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 344

Introduced by Friesen, 34.

Read first time January 13, 2021

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to the One-Call Notification System Act; to
- 2 amend sections 76-2301, 76-2303, 76-2325, and 76-2325.02, Revised
- 3 Statutes Cumulative Supplement, 2020; to define a term; to create
- 4 the Underground Excavation Safety Committee; to provide powers and
- 5 duties for the committee and the State Fire Marshal; to change civil
- 6 penalty procedures; to change provisions relating to reports by the
- 7 Attorney General; to harmonize provisions; and to repeal the
- 8 original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-2301, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 76-2301 Sections 76-2301 to 76-2332 and sections 3 and 4 of this act
4 shall be known and may be cited as the One-Call Notification System Act.

5 Sec. 2. Section 76-2303, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 76-2303 For purposes of the One-Call Notification System Act, the
8 definitions found in sections 76-2303.01 to 76-2317 and section 3 of this
9 act shall be used.

10 Sec. 3. Committee means the Underground Excavation Safety
11 Committee.

12 Sec. 4. (1) The Underground Excavation Safety Committee is created.
13 The committee shall consist of the following members: (a) The State Fire
14 Marshal, (b) two representatives of operators, and (c) two
15 representatives of excavators. The representative members shall be
16 appointed by the Governor. The Governor shall appoint one of the two
17 initial representatives of operators described in subdivision (b) of this
18 subsection, and one of the two initial representatives of excavators
19 described in subdivision (c) of this subsection to a two-year term. The
20 other initial appointments shall be for a four-year term. All succeeding
21 terms shall be for four years. A committee member may be reappointed at
22 the end of such member's term. If there is a vacancy on the committee,
23 the Governor shall appoint a member to serve the remainder of the
24 unexpired term of the vacating member.

25 (2) The committee shall select from among its members a chairperson.
26 The committee shall govern its procedures pursuant to rules and
27 regulations adopted and promulgated by the State Fire Marshal. No person
28 shall receive any compensation for services rendered as a member of the
29 committee. Each member of the committee shall be reimbursed for expenses
30 as provided in sections 81-1174 to 81-1177.

31 (3) The committee shall meet not less than quarterly each year, and

1 also at such times as the business of the committee requires and at such
2 places as may be established by the chairperson. When initiated by the
3 State Fire Marshal, it shall be the duty of the committee to review
4 complaint proceedings pursuant to section 76-2325. No member of the
5 committee shall sit in hearing upon any question in which such member or
6 any corporation of which such member is a shareholder or employee is a
7 party.

8 Sec. 5. Section 76-2325, Revised Statutes Cumulative Supplement,
9 2020, is amended to read:

10 76-2325 (1)(a) Upon a complaint filed with the State Fire Marshal by
11 any person or entity, or upon the State Fire Marshal's own complaint,
12 alleging any violation described in subsection (2) of this section, the
13 State Fire Marshal shall initiate review proceedings before the committee
14 to hear evidence from both the complainant and the respondent regarding
15 the alleged violation.

16 (b) The State Fire Marshal shall commence the review proceedings by
17 first serving a notice of hearing on all parties by personal service or
18 by certified mail, return receipt requested. Such notice shall set forth
19 the time and place of hearing and include notice of each party's right to
20 introduce evidence and make arguments before the committee concerning the
21 alleged violation.

22 (c) Within thirty days following the hearing, the committee shall
23 submit its written findings and recommendation to the Attorney General
24 specifying (i) whether a violation of the One-Call Notification System
25 Act occurred and (ii) if a violation occurred, the appropriate civil
26 penalty for such violation. The State Fire Marshal shall serve copies of
27 the findings and recommendation on all parties by personal service or by
28 certified mail, return receipt requested.

29 (d) Only by a unanimous vote of the committee shall the committee's
30 recommendation include a civil penalty as provided in subsection (2) of
31 this section. Further, upon a majority vote of the members of the

1 committee, the committee may recommend continuing education for the
2 violator regarding compliance with the One-Call Notification System Act.

3 (2) ~~(1)~~ Any person who violates section 76-2320, 76-2320.01,
4 76-2320.02, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 shall
5 be subject to a civil penalty as follows:

6 (a) For a violation by an excavator or an operator related to a gas
7 or hazardous liquid underground pipeline facility or a fiber optic
8 telecommunications facility, an amount not to exceed ten thousand dollars
9 for each violation for each day the violation persists, up to a maximum
10 of five hundred thousand dollars; and

11 (b) For a violation by an excavator or an operator related to any
12 other underground facility, an amount not to exceed five thousand dollars
13 for each day the violation persists, up to a maximum of fifty thousand
14 dollars.

15 (3) ~~(2)~~ An action to recover a civil penalty as recommended by the
16 committee pursuant to subsection (1) of this section shall be brought by
17 the Attorney General or a prosecuting attorney on behalf of the State of
18 Nebraska in any court of competent jurisdiction of this state. The trial
19 shall be before the court, which shall consider the nature,
20 circumstances, and gravity of the violation and, with respect to the
21 person found to have committed the violation, the degree of culpability,
22 the absence or existence of prior violations, whether the violation was a
23 willful act, any good faith attempt to achieve compliance, and such other
24 matters as justice may require in determining the amount of penalty
25 imposed. All penalties shall be remitted to the State Treasurer for
26 distribution in accordance with Article VII, section 5, of the
27 Constitution of Nebraska.

28 Sec. 6. Section 76-2325.02, Revised Statutes Cumulative Supplement,
29 2020, is amended to read:

30 76-2325.02 (1) The Attorney General shall make an annual report to
31 the Legislature, the State Fire Marshal, the committee, and the board of

1 directors by each March 15 on the number of complaints filed and the
2 number of such complaints prosecuted under section 76-2325 during the
3 previous calendar year. The report to the Legislature shall be made
4 electronically.

5 (2) The Attorney General shall provide a status report to the
6 committee on each active complaint filed under section 76-2325 not less
7 than on a quarterly basis each calendar year.

8 Sec. 7. Original sections 76-2301, 76-2303, 76-2325, and
9 76-2325.02, Revised Statutes Cumulative Supplement, 2020, are repealed.