

# **One Call Notification System Act**

## **76-2301. Act, how cited.**

Sections 76-2301 to 76-2332 shall be known and may be cited as the One-Call Notification System Act.

Effective Date: September 1, 2019

## **76-2302. Legislative intent.**

(1) It is the intent of the Legislature to establish a means by which excavators may notify operators of underground facilities in an excavation area so that operators have the opportunity to identify and locate the underground facilities prior to excavation and so that the excavators may then observe proper precautions to safeguard the underground facilities from damage.

(2) It is the purpose of the One-Call Notification System Act to aid the public by preventing injury to persons and damage to property and the interruption of utility services resulting from accidents caused by damage to underground facilities.

## **76-2303. Definitions, where found.**

For purposes of the One-Call Notification System Act, the definitions found in sections 76-2303.01 to 76-2317 shall be used.

Effective Date: September 1, 2019

### **76-2303.01. Bar test survey, defined.**

Bar test survey means a leakage survey completed with a nonconductive piece of equipment made by manually driving small holes in the ground at regular intervals along the route of an underground gas pipe for the purpose of extracting a sample of the ground atmosphere and testing the atmosphere in the holes with a combustible gas detector or other suitable device.

#### **76-2304. Business day, defined.**

Business day shall mean any day other than a Saturday, Sunday, or state or nationally observed legal holiday.

#### **76-2305. Center, defined.**

Center means a call center which shall have as its principal purpose the statewide receipt and dissemination to participating operators of information on a fair and uniform basis concerning intended excavations by excavators in areas where operators have underground facilities.

Effective Date: September 1, 2019

#### **76-2306. Damage, defined.**

Damage shall mean any impact with, partial or complete severance, destruction, impairment, or penetration of, or removal or weakening of support from an underground facility, including its protective coating, housing, or other protective device.

#### **76-2307. Emergency condition, defined.**

Emergency condition shall mean any condition which constitutes a clear and present danger to life, health, or property or which demands immediate action to prevent or repair a major service outage.

#### **76-2308. Excavation, defined.**

Excavation shall mean any activity in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives and shall include grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, and cable or pipe plowing or driving but shall not include.

(1) normal maintenance of roads if the maintenance does not change the original road grade and does not involve the road ditch,

(2) tilling of soil and gardening for seeding and other agricultural purposes,

(3) digging of graves or in landfills in planned locations,

(4) maintenance or rebuilding of railroad track or facilities located on a railroad right-of-way by the railroad company or its contractors when such maintenance or rebuilding does not change the track grade, or

(5) hand digging around the base of a pole for pole inspection as part of routine maintenance or replacement of a pole when the replacement pole is similarly sized and is installed in the existing hole.

**76-2309. Excavator, defined.**

Excavator shall mean a person who engages in excavation in this state.

**76-2310. Gas or hazardous liquid underground pipeline facility, defined.**

Gas or hazardous liquid underground pipeline facility shall mean any underground facility used or intended for use in the transportation of gas or the treatment of gas or used or intended for use in the transportation of hazardous liquids including petroleum or petroleum products.

**76-2310.01. Locator, defined.**

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

Effective Date: September 1, 2019

**76-2311. Nonpermanent surface, defined.**

Nonpermanent surface shall mean any ground consisting of uncovered dirt or rock or ground that is covered by grass or other plant life, crushed rock, gravel, or other similar natural substance.

### **76-2312. Normal working hours, defined.**

Normal working hours shall mean the hours of 7am to 5pm on a business day in each time zone in the state.

### **76-2313. Operator, defined.**

Operator shall mean a person who manages or controls the functions of an underground facility but shall not include a person who is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on the real property.

### **76-2314. Permanent surface, defined.**

Permanent surface shall mean any ground that is covered by a hard, artificial, weatherproof material such as concrete, asphalt, or other similar artificial substance.

### **76-2315. Person, defined.**

Person means an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer, employee, or contractor of an individual.

Effective Date: September 1, 2019

### **76-2316. Repealed.**

Effective Date: September 1, 2019

### **76-2316.01. Ticket, defined.**

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

Effective Date: September 1, 2019

### **76-2317. Underground facility, defined.**

Underground facility shall mean any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic communications, telephonic communications, telegraphic communications, cable television, electric energy, oil, gas, hazardous liquids, or other substances, including pipes, trunk lines, fiber optic cables, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such personal property.

### **76-2318. Center; membership required.**

Operators of underground facilities shall become members of and participate in the center.

Effective Date: September 1, 2019

### **76-2319. Board of directors; rules and regulations; selection of vendor.**

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

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

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

- (a) Any requirements necessary to comply with United States Department of Transportation programs;
- (b) The qualifications, appointment, retention, and composition of the board of directors; and

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

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

Effective Date: September 1, 2019

#### **76-2319.01. Board of directors; duties; report.**

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

Effective Date: September 1, 2019

#### **76-2320. Operator; duty to furnish information; center operational, when.**

Every operator shall furnish the vendor selected by the board of directors with information concerning the location of its underground facilities. Every operator having underground facilities in existence in this state on February 16, 1994, shall furnish such information to the vendor by April 3, 1995. The vendor shall have the center operational on October 2, 1995.

#### **76-2320.01. Locator; training required.**

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

Effective Date: September 1, 2019

#### **76-2320.02. Use of plastic or nonmetallic underground facilities; installation requirements.**

Notwithstanding any other provision of the One-Call Notification System Act, any plastic or nonmetallic underground facilities installed underground on or after January 1, 2021, shall be installed in such a

manner as to be locatable, either by mapping or by use of tracer wire, by the operator for purposes of the act.

Effective Date: September 1, 2019

### **76-2321. Excavation; notice; contents; commencement.**

(1) A person shall not commence any excavation without first giving notice to every operator. An excavator's notice to the center shall be deemed notice to all operators. An excavator's notice to operators shall be ineffective for purposes of this subsection unless given to the center. Notice to the center shall be given at least two full business days, but no more than ten business days, before commencing the excavation, except notice may be given more than ten business days in advance when the excavation is a road construction, widening, repair, or grading project provided for in sections 70-311 to 70-313 and 86-708 to 86-710. An excavator may commence work before the elapse of two full business days when

(a) notice to the center has been given as provided by this subsection and

(b) all the affected operators have notified the excavator that the location of all the affected operator's underground facilities have been marked or that the operators have no underground facilities in the location of the proposed excavation.

(2) The notice required pursuant to subsection (1) of this section shall include

(a) the name and telephone number of the person making the notification,

(b) the name, address, and telephone number of the excavator,

(c) the location of the area of the proposed excavation, including the range, township, section, and quarter section, unless the area is within the corporate limits of a city or village, in which case the location may be by street address,

(d) the date and time excavation is scheduled to commence,

(e) the depth of excavation,

(f) the type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring, and

(g) whether the use of explosives is anticipated.

### **76-2322. Excavator; notice to center.**

An excavator shall serve notice of intent to excavate upon the center by submitting a locate request using a method provided by the center. The center shall inform the excavator of all operators to whom such notice will be transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation. The notice shall be transmitted to operators and excavators as a ticket. The center shall assign an identification number to each notice received, which number shall be evidenced on the ticket.

Effective Date: September 1, 2019

### **76-2323. Underground facilities; mark or identify.**

(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 76-2331. 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 such operator does not have any underground facility located in the area of the proposed excavation shall notify the center of the determination prior to the date of commencement of the excavation, or prior to two full business days after transmittal of the ticket, whichever occurs sooner. All ticket responses made under this subsection shall be transmitted to the operator and excavator by the center.

Effective Date: September 1, 2019



### **76-2324. Excavator; liability for damage; when.**

An excavator who fails to give notice of an excavation pursuant to section 76-2321 or who fails to comply with section 76-2331 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.

Effective Date: July 18, 2014

### **76-2325. Violations; civil penalty.**

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

(a) For a violation by an excavator or an operator related to a gas or hazardous liquid underground pipeline facility or a fiber optic telecommunications 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

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

(2) 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 remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Effective Date: September 1, 2019

### **76-2325.01. Unlawful interference; penalty.**

Any person who willfully and maliciously breaks, injures, destroys, or otherwise interferes with the poles, wires, or other facilities of any telecommunications or railroad company or electric light and power company in this state or who willfully and purposely interrupts or interferes with the transmission of telecommunications messages or the transmission of light, heat, and power in this state shall be subject to the action and penalty prescribed in section 28-519.

### **76-2325.02. Attorney General; annual report; contents.**

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

Effective Date: September 1, 2019

### **76-2326. Damage; duty of excavator.**

If any underground facility is damaged, dislocated, or disturbed before or during excavation, the excavator shall immediately notify the center. An excavator shall not conceal or attempt to conceal damage, dislocation, or disturbance of an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility.

### **76-2327. Incorrect location; duty of excavator.**

If in the course of excavation the excavator discovers that the operator has incorrectly located the underground facility, he or she shall notify the center as soon as practical but no later than seventy-two hours after discovery.

### **76-2328. Local Permits; treatment; claims against political subdivisions.**

The One-Call Notification System Act shall not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before an excavation. A permit issued by a governing body shall not relieve an excavator from complying with the requirements of the act. No claim shall be maintained under the One-Call Notification System Act against a political subdivision or its officers, agents, or employees except to the extent, and only to the extent, provided by the Political Subdivisions Tort Claims Act.

## **76-2329. Emergency conditions; bar test survey; notification requirements; liability.**

(1) Sections 76-2321 and 76-2323 shall not apply to an excavation made under an emergency condition if all reasonable precautions are taken to protect the underground facilities. If an emergency condition exists, the excavator shall give notification in substantial compliance with section 76-2321 as soon as practical. Upon being notified that an emergency condition exists, each operator shall provide all reasonably available location information to the excavator as soon as possible. If the emergency condition has arisen through no fault of the excavator, sections 76-2324 and 76-2325 shall not apply and the excavator shall be liable for damage to any underground facility located in the area if the damage occurs because of the negligent acts or omissions of the excavator.

(2) Sections 76-2321 and 76-2323 shall not apply to a bar test survey deemed necessary to address an emergency condition performed by the operator of the gas or hazardous liquid underground pipeline facility or a qualified excavator who has been engaged to work on behalf of the operator in response to a reported or suspected leak of natural gas, propane, or other combustible liquid or gas. If the emergency condition has arisen through no fault of the excavating operator, section 76-2325 shall not apply.

(3) Sections 76-2321 and 76-2323 shall not apply to an excavation deemed necessary to address an emergency condition performed by the operator of the gas or hazardous liquid underground pipeline facility or a qualified excavator who has been engaged to work on behalf of the operator to address a leak of natural gas, propane, or other combustible liquid or gas. In such event, the operator shall give notification in substantial compliance with section 76-2321 prior to the excavation undertaken by the operator to address the emergency condition. Upon being notified that an emergency condition exists, each operator shall provide all reasonably available location information to the excavating operator as soon as possible, but the excavating operator need not wait for such location information prior to excavation or continuing excavation. If the emergency condition has arisen through no fault of the excavating operator, section 76-2325 shall not apply.

## **76-2330. Center; duties.**

The center shall:

(1) Maintain adequate records documenting compliance with the requirements of the One-Call Notification System Act, including records of all telephone calls and records of all location requests for the preceding five years which will be made available and printed upon request of an operator or excavator;

(2) Provide the notification service during normal working hours at a minimum; and

(3) Provide procedures for emergency notification for calls received at other than normal working hours.

Effective Date: July 18, 2014

### **76-2331. Underground natural gas transmission line; representative present; excavation; duties.**

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.

### **76-2332. State Fire Marshal; powers.**

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

### **28-519. Criminal Penalties.**

(1) A person commits criminal mischief if he or she: (a) Damages property of another intentionally or recklessly; or (b) Intentionally tampers with property of another so as to endanger person or property; or (c) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat. (2) Criminal mischief is a Class IV felony if the actor intentionally or maliciously causes pecuniary loss of one thousand five hundred dollars or more, or a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service. (3) Criminal mischief is a Class I misdemeanor if the actor intentionally or maliciously causes pecuniary loss of five hundred dollars or more but less than one thousand five hundred dollars. (4) Criminal mischief is a Class II misdemeanor if the actor intentionally or maliciously causes pecuniary loss of two hundred dollars or more but less than five hundred dollars. (5) Criminal mischief is a Class III misdemeanor if the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than two hundred dollars, or if his or her action results in no pecuniary loss.

## **Penalties Under The Law**

There are fines for failure to do what the One Call Notification Act requires. For a violation related to a gas or hazardous liquid underground pipeline facility or a fiber optic telecommunications facility, fines in 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 may be assessed. For violations related to any other underground facility, an amount not to exceed \$5000 for each day the violation persists, up to a maximum of \$50,000 may be assessed. There are also criminal penalties for any person who willfully and maliciously interferes with underground facilities or interrupts the transmission of a public utility as provided in Section 28-519 (see above).