

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 462**

Introduced by Friesen, 34.

Read first time January 18, 2019

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, 76-2305, 76-2319, 76-2322, and  
3 76-2325, Reissue Revised Statutes of Nebraska; to define and  
4 redefine terms; to provide duties for the board of directors and the  
5 State Fire Marshal; to provide for the licensing of locators and the  
6 establishment of minimum training standards and practices; to create  
7 a dispute resolution board as prescribed; to provide a penalty; to  
8 harmonize provisions; to repeal the original sections; and to  
9 outright repeal section 76-2316, Reissue Revised Statutes of  
10 Nebraska.

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

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

3 76-2301 Sections 76-2301 to 76-2331 and sections 3, 5, 6, 8, 9, and  
4 12 of this act shall be known and may be cited as the One-Call  
5 Notification System Act.

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

8 76-2303 For purposes of the One-Call Notification System Act, the  
9 definitions found in sections 76-2303.01 to 76-2317 and sections 3, 5,  
10 and 6 of this act shall be used.

11 Sec. 3. Board of directors means the board of directors established  
12 under section 76-2319 and composed of members designated pursuant to  
13 rules and regulations adopted and promulgated by the State Fire Marshal.

14 Sec. 4. Section 76-2305, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

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

21 Sec. 5. Locator means a person who identifies and marks underground  
22 facilities for an operator, including a contractor for an operator who  
23 performs such location services.

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

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

29 76-2319 (1) The center shall be governed by a board of directors who  
30 shall oversee operation of the center pursuant to rules and regulations  
31 adopted and promulgated by the State Fire Marshal to carry out the One-

1 Call Notification System Act. The board of directors shall have the  
2 authority to (a) propose all rules and regulations to be adopted and  
3 promulgated pursuant to this section, (b) hire and retain staff and  
4 contract with the State Fire Marshal for services to carry out the One-  
5 Call Notification System Act, (c) appoint a dispute resolution board to  
6 initiate proceedings upon a complaint filed with the board of directors  
7 and hear evidence regarding such complaint and make recommendations to  
8 the State Fire Marshal as provided in section 9 of this act, (d)  
9 determine the parameters of cases the dispute resolution board shall  
10 hear, and (e) have such other authority as provided by rules and  
11 regulations adopted and promulgated by the State Fire Marshal that are  
12 not inconsistent with the One-Call Notification System Act.

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

23 (3) ~~(2)~~ The rules and regulations adopted and promulgated by the  
24 State Fire Marshal to carry out subsection (2) of this section may  
25 provide for:

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

28 (b) The qualifications, appointment, retention, and composition of  
29 the board of directors; and

30 (c) Best practices for the marking, location, and notification of  
31 proposed excavations which shall govern the center, excavators, and

1 operators of underground facilities.

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

5 Sec. 8. (1) Only a locator licensed by the State Fire Marshal  
6 pursuant to this section may perform underground facility location  
7 activities. The State Fire Marshal shall adopt minimum training standards  
8 and practices for locators which may be based on current national locator  
9 training standards and practices. Each locator's training shall be  
10 documented. Such documentation shall be maintained by each operator or  
11 locator and shall be submitted to and reviewed by the State Fire Marshal  
12 before a locator license may be issued.

13 (2) All applications for a locator license shall be made to the  
14 State Fire Marshal. An applicant may be an individual or other person.  
15 The State Fire Marshal may issue a license based on training  
16 documentation submitted with an application which meets the standards  
17 described in subsection (1) of this section, and upon the payment of a  
18 non-refundable application fee as established by the State Fire Marshal  
19 to offset the costs of administering the locator license program. The  
20 State Fire Marshal may refuse to issue a license to any applicant failing  
21 to meet such training standards. The State Fire Marshal may suspend or  
22 revoke a locator license for malfeasance or nonfeasance in performing  
23 underground facility location activities or for any violation of the One-  
24 Call Notification System Act. Any denial to issue a locator license or  
25 any suspension or revocation of such license may occur only after prior  
26 notice is given to the applicant or license holder, and the applicant or  
27 license holder is provided the right to a hearing before the State Fire  
28 Marshal, pursuant to rules and regulations adopted by the State Fire  
29 Marshal.

30 (3) Any action of the State Fire Marshal pursuant to subsection (2)  
31 of this section may be appealed, and the appeal shall be in accordance

1 with the Administrative Procedure Act.

2       Sec. 9. (1) The board of directors shall include as part of its  
3 operations a dispute resolution board which shall consist of two  
4 excavator members and two operator members selected by the board of  
5 directors from within its membership and one employee of the State Fire  
6 Marshal's office other than the State Fire Marshal as designated by the  
7 State Fire Marshal. The dispute resolution board shall hear disputes  
8 between excavators and operators regarding damage to any underground  
9 facility caused by an excavation as provided by this section. Members of  
10 the dispute resolution board shall be reimbursed for their actual and  
11 necessary expenses as provided in sections 81-1174 to 81-1177.

12       (2) Upon a complaint filed with the State Fire Marshal by an  
13 excavator or operator alleging that a dispute exists regarding liability  
14 for damage under section 76-2324, the State Fire Marshal shall initiate a  
15 proceeding before the dispute resolution board to hear evidence from both  
16 the complainant and respondent regarding such dispute. A notice of  
17 hearing shall be sent by the State Fire Marshal to all parties by  
18 personal service or by certified mail, return receipt requested. Such  
19 notice shall set forth the time and place of hearing and include notice  
20 that the right to a hearing may be waived by the respondent but that such  
21 waiver shall be construed as an admission of liability by the dispute  
22 resolution board. If the complainant and respondent agree to settle the  
23 dispute prior to hearing, notice of such settlement shall be sent by both  
24 parties to the State Fire Marshal who shall then cancel the hearing.  
25 Hearing expenses incurred shall be reimbursed to the State Fire Marshal  
26 by the board of directors from center funds.

27       (3) After notice and hearing, the dispute resolution board shall  
28 make its findings and submit a recommendation to the State Fire Marshal  
29 for issuance of an order in determination of liability. The State Fire  
30 Marshal shall issue his or her order and serve copies of the same on all  
31 parties by personal service or by certified mail, return receipt

1 requested, no later than thirty days after hearing. Such order of the  
2 State Fire Marshal may be appealed, and such appeal shall be in  
3 accordance with the Administrative Procedure Act.

4 (4) Nothing in this section shall be construed to limit the right of  
5 any party to pursue other relief or remedies provided by law, including  
6 commencing a civil action in the appropriate district court.

7 (5) The State Fire Marshal may adopt and promulgate rules and  
8 regulations necessary to carry out this section.

9 Sec. 10. Section 76-2322, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 76-2322 An excavator shall serve notice of intent to excavate upon  
12 the center by submitting a locate request using a method provided by the  
13 center. The center shall inform the excavator of all operators to whom  
14 such notice will be transmitted and shall promptly transmit such notice  
15 to every operator having an underground facility in the area of intended  
16 excavation. The notice shall be transmitted to operators and excavators  
17 as a ticket. The center shall assign an identification number to each  
18 notice received, which number shall be evidenced on the ticket.

19 Sec. 11. Section 76-2325, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 76-2325 (1) Any person who violates the provisions of section  
22 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or  
23 section 8 of this act shall be subject to a civil penalty as follows:

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

29 (b) (2) For a violation related to any other underground facility,  
30 an amount not to exceed five thousand dollars for each day the violation  
31 persists, up to a maximum of fifty thousand dollars; and

1        (c) For a violation related to an unlicensed person operating as a  
2 locator contrary to section 8 of this act, an amount not to exceed five  
3 hundred dollars per violation.

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

16        Sec. 12. (1) For purposes of this section, underground facility has  
17 the same meaning as in section 76-2317 except the underground facility  
18 shall not include facilities related to gas or liquid natural gas.

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

24        Sec. 13. Original sections 76-2301, 76-2303, 76-2305, 76-2319,  
25 76-2322, and 76-2325, Reissue Revised Statutes of Nebraska, are repealed.

26        Sec. 14. The following section is outright repealed: Section  
27 76-2316, Reissue Revised Statutes of Nebraska.