

LEGISLATIVE BILL 462

Approved by the Governor May 30, 2019

Introduced by Friesen, 34; Albrecht, 17.

A BILL FOR AN ACT relating to telecommunications; to amend sections 76-2301, 76-2303, 76-2305, 76-2315, 76-2318, 76-2319, 76-2322, 76-2323, 76-2325, 86-101, 86-103, 86-124, and 86-144, Reissue Revised Statutes of Nebraska; to define, redefine, and eliminate terms; to change the One-Call Notification System Act and the Nebraska Telecommunications Regulation Act as prescribed; to harmonize provisions; to repeal the original sections; and to outright repeal section 76-2316, Reissue Revised Statutes of Nebraska.

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

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

76-2301 Sections 76-2301 to 76-2331 and sections 4, 6, 9, 10, 11, 15, and 16 of this act shall be known and may be cited as the One-Call Notification System Act.

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

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

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

76-2305 Center means a call shall mean the statewide one-call notification 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.

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

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

76-2315 Person means shall mean 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.

Sec. 6. 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.

Sec. 7. Section 76-2318, Reissue Revised Statutes of Nebraska, is amended to read:

76-2318 Operators of underground facilities shall become members of and participate in the statewide one-call notification center.

Sec. 8. Section 76-2319, Reissue Revised Statutes of Nebraska, is amended to read:

76-2319 (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) (2) 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) (3) Any rule or regulation adopted and promulgated by the State Fire Marshal pursuant to subdivision (3)(c) (2)(e) of this section shall originate

with the board of directors.

Sec. 9. 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.

Sec. 10. 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.

Sec. 11. 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.

Sec. 12. Section 76-2322, Reissue Revised Statutes of Nebraska, is amended to read:

76-2322 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.

Sec. 13. Section 76-2323, Reissue Revised Statutes of Nebraska, is amended to read:

76-2323 (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 it does not have any underground facility located in the area of the proposed excavation shall notify the center excavator 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.

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

76-2325 (1) Any person who violates the provisions of section 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or section 9 or 10 of this act shall be subject to a civil penalty as follows:

(a) ~~(1)~~ 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) ~~(2)~~ 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.

Sec. 15. 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.

Sec. 16. 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.

Sec. 17. Section 86-101, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

(c) Interexchange services; and

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

(2) This section shall not affect or modify:

(a) The enforcement of criminal or civil laws, including, but not limited to, laws concerning consumer protection and unfair or deceptive trade practices which apply generally to the conduct of business;

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

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

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

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

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

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

86-144 Telecommunications ~~(1)(a) Except as provided in subdivision (b) of this subsection, in an exchange in which local competition does not exist, telecommunications companies shall file rate lists which, for all telecommunications service. The rate lists except for basic local exchange rates, shall be effective after (1) ten days' notice to the commission or (2) for basic local exchange rate increases, at least sixty days' notice to the commission and all impacted subscribers. (b) Notwithstanding any other provision of Chapter 86, a telecommunications company shall not be required to file rate lists, tariffs, or contracts for any telecommunications service, including local exchange and interexchange services, provided as a business service. Upon written notice to the commission, a telecommunications company may withdraw any rate list, tariff, or contract not required to be filed under this section subdivision if the telecommunications company posts the rates, terms, and conditions of its telecommunications service on the company's web site.~~

(2) In an exchange in which local competition does not exist, basic local exchange rates may be increased by a telecommunications company only after ninety days' notice to all affected subscribers. Such notice of increase shall include (a) the reasons for the rate increase, (b) a description of the affected telecommunications service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate

~~increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section.~~

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

Sec. 23. Original sections 76-2301, 76-2303, 76-2305, 76-2315, 76-2318, 76-2319, 76-2322, 76-2323, 76-2325, 86-101, 86-103, 86-124, and 86-144, Reissue Revised Statutes of Nebraska, are repealed.

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