

HOUSE BILL NO. 1359

Introduced by

Representatives N. Johnson, Klein, Delmore

Senators Andrist, Klein, Dotzenrod

1 A BILL for an Act to amend and reenact sections 49-07-01.1, 49-23-04, and 49-23-05 of the
2 North Dakota Century Code, relating to the one-call notice system; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 49-07-01.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **49-07-01.1. Violation of statute, commission order, or commission rule - Assessment**
7 **of civil penalty.**

8 Any person who violates any statute, commission order, or commission rule which applies
9 to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25,
10 and 51-05.1, titles 60 and 64, and title 49 except for ~~chapter~~ chapters 49-22 and 49-23, shall, in
11 addition to any other penalty provided, be subject to a civil penalty of not to exceed five
12 thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is
13 subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall
14 develop policies for the assessment of penalties under chapter 49-23 which will take into
15 consideration the severity of damages and the conduct of the offender. The civil penalty may be
16 compromised by the commission. The amount of the penalty when finally determined or agreed
17 upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

18 **SECTION 2. AMENDMENT.** Section 49-23-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **49-23-04. Excavation.**

21 1. Except in an emergency, an excavator shall contact the notification center and provide
22 an excavation or location notice at least forty-eight hours before ~~beginning~~ the planned
23 commencement of any excavation, excluding Saturdays, Sundays, and holidays,
24 unless otherwise agreed to between the excavator and operator. If an operator

- 1 determines more time is necessary for location, the operator may request a
2 twenty-four-hour extension of the excavation or location notice by notifying the
3 notification center. The notification center shall notify the excavator of the extension.
4 An excavation begins the first time excavation occurs in an area that was not
5 previously identified by the excavator in an excavation notice. The notice must contain:
- 6 a. The name, address, and telephone number of the person making the notification;
 - 7 b. The name, address, and telephone number of the excavator;
 - 8 c. The date and time when excavation is scheduled to begin;
 - 9 d. The depth of planned excavation;
 - 10 e. The type and extent of excavation being planned, including whether the
11 excavation involves tunneling or horizontal boring;
 - 12 f. Whether the use of explosives is anticipated and any other information as may be
13 required by the notification center; and
 - 14 g. The location of the excavation by any one or more of the following means:
 - 15 (1) A specific street address;
 - 16 (2) A reference to a platted lot number of record; or
 - 17 (3) An identifiable roadway or roadway intersection; or
 - 18 (4) A specific quarter section by section number, range, township, and county.
19 In this case, the location shall be further described by coordinates measured
20 in feet from the nearest one-fourth corner or section corner.
 - 21 h. If the planned excavation site is too large or complex to be clearly and
22 adequately identified by description in the location request, the excavator shall
23 provide additional location information by one or more of the following means:
24 white marking, project staking, geographic information system shape file, detailed
25 drawing, map, or other appropriate means. An excavator may not be required to
26 provide additional location information if the excavator and the affected operators
27 plan a meeting at the planned excavation site before beginning excavation.
 - 28 i. A request for location is limited to the area to be excavated during the twenty-one
29 day period following the location request.
 - 30 j. An excavator may begin excavation in a location if the location period has passed
31 without notification of a requested extension or prior to the expiration of the

1 location period if the excavator has received notice that all facilities have been
2 located or cleared.

3 2. The notification center shall:

4 a. Provide a toll-free telephone number and assign an inquiry identification number
5 to each excavation notice and retain a record of all excavation notices received
6 for at least six years.

7 b. Immediately transmit the information contained in an excavation notice to every
8 operator that has an underground facility in the area of the proposed excavation.

9 c. Inform the persons giving notice of an intent to engage in an excavation activity
10 the names of participating operators of underground facilities to whom the notice
11 will be given.

12 d. Establish procedures for assuring positive response from the affected operator in
13 all emergency excavation notices.

14 3. a. An operator, within forty-eight hours, or any extension of that period, after
15 receiving an excavation notice from the center, excluding Saturdays, Sundays,
16 and holidays, unless otherwise agreed to between the excavator and operator,
17 shall locate and mark or otherwise provide the approximate horizontal location of
18 the underground facilities of the operator.

19 b. For purposes of this section, the approximate horizontal location of the
20 underground facilities is a strip of land two feet [60.96 centimeters] on either side
21 of the underground facilities. This subdivision does not apply to an underground
22 facility to convey water.

23 c. When an operator cannot establish the exact location of the underground facility
24 to convey water, the operator shall mark the location as accurately as possible
25 and the excavator may proceed with caution. When excavation operations
26 approach the estimated location of the underground facility to convey water, the
27 exact location of the facility must be determined by safe and acceptable means.
28 The uncovered facility must be supported and protected to prevent damage.

29 d. Markers used to designate the approximate location of underground facilities
30 must follow the current color code standard used by the American public works
31 association.

- 1 e. If the operator cannot complete marking of the excavation area before the
2 excavation commencement time stated in the excavation notice, the operator
3 shall promptly contact the excavator.
- 4 f. After facilities are located by an operator, an excavator shall notify the notification
5 center if:
- 6 (1) The excavator postpones the excavation commencement time stated in the
7 excavation notice by more than forty-eight hours, or any extension of that
8 period, or cancels the excavation;
- 9 (2) The markings have been obliterated or obscured;
- 10 (3) Weather conditions have impeded visibility of the markings;
- 11 (4) The site shows evidence of recent excavation; or
- 12 (5) The excavator has other reason to believe the markings are incorrect or
13 missing.
- 14 g. An excavator may not use a location more than ~~ten~~twenty-one days, or any
15 extension of that period, after the planned excavation date unless the excavator
16 has made previous arrangements with the operators affected.
- 17 h. If excavation has not occurred within the initial twenty-one days of the locate, the
18 excavator shall request that the facility be relocated before excavating unless
19 other arrangements have been made with the underground facility owner. Upon
20 the third locate request at the same excavation site where no excavation has
21 occurred after the initial two locates, the excavator is responsible for reasonable
22 costs associated with relocating facilities in that location.
- 23 i. If a relocate request is made for an area which includes areas where excavation
24 has been completed, a request for relocate must be modified from the original
25 locate request to reflect only the area to be excavated during each subsequent
26 twenty-one day period, otherwise the excavator is responsible for reasonable
27 costs associated with relocating facilities in the location.
- 28 j. If in the course of excavation the excavator is unable to locate the underground
29 facility or discovers that the operator of the underground facility has incorrectly
30 located the underground facility, the excavator shall promptly notify the operator
31 or, if unknown, the one-call notification center.

1 i.k. A facility owner, excavator, or other person may not present or presume that an
2 underground facility is abandoned, or treat an underground facility as abandoned,
3 unless the facility has been verified as abandoned by reference to installation
4 records or by testing. The notification center shall establish a method of providing
5 personnel from a facility owner qualified to safely inspect and verify whether a
6 facility is abandoned or inactive if necessary. An inactive facility must be
7 considered active for purposes of this section.

8 l. An underground facility owner shall make all new facilities locatable.

9 4. If an excavation is being made in a time of emergency, all reasonable precautions
10 must be taken to protect the underground facilities. In an emergency, the excavator
11 shall give notification in compliance with this chapter, as soon as practical, that an
12 emergency exists. As soon as practical, each operator shall provide all location
13 information that is reasonably available to the excavator.

14 **SECTION 3. AMENDMENT.** Section 49-23-05 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **49-23-05. Precautions to avoid damage.**

17 To avoid damage to and minimize interference with underground facilities in and near the
18 construction area, an excavator shall:

- 19 1. Maintain a clearance between an underground facility and the cutting edge or point of
20 any mechanized equipment, considering the known limit of control of the cutting edge
21 or point to avoid damage to the facility.
- 22 2. Provide support in a manner approved by the operator for underground facilities in and
23 near the construction area, including backfill operations to protect the facilities. Backfill
24 must be of a material equal to or better in both quality and quantity to the existing
25 backfill.
- 26 3. Assume ownership of materials used to mark the facility, use reasonable efforts to
27 maintain markings during excavation and when possible remove all tangible marking
28 materials used to mark the facility.
- 29 4. Assume the cost of excavation to expose the facility unless otherwise indicated by
30 owner of facility.
- 31 5. Conduct the excavation in a careful and prudent manner.

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- 1 6. Properly manage spoil material to prevent shifting or falling material that could
- 2 damage belowground facilities.