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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1275

02/06/2023 Authored by Kraft

The bill was read for the first time and referred to the Committee on Transportation Finance and Policy

03/08/2023 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to public safety; amending excavation notice requirements; requiring

1.3 excavation notice reporting; tying civil penalties for pipeline safety violations to

1.4 federal law; amending Minnesota Statutes 2022, sections 216D.03, by adding a

1.5 subdivision; 216D.04, subdivisions 1, 3; 216D.05; 299F.60, subdivision 1; 299J.16,

1.6 subdivision 1.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2022, section 216D.03, is amended by adding a subdivision

1.9 to read:

1.10 Subd. 5. Excavation notice system performance reporting. (a) Each operator must

1.11 submit a report to the Office of Pipeline Safety on a quarterly basis, using a form or database

1.12 entry designated by the Office of Pipeline Safety, that contains the following information:

1.13 (1) the total number of notifications, itemized by type;

1.14 (2) for each notification type, the percentage of notifications marked by the start time

1.15 on the notice; and

1.16 (3) the total number of utility damages, itemized by the cause of the damage.

1.17 (b) Other than a pipeline operator subject to chapter 299F or 299J, an operator with

1.18 fewer than 5,000 notifications received during the previous calendar year is exempt from

1.19 the reporting requirement under paragraph (a).

1.20 (c) The commissioner may not use information submitted in a report required under this

1.21 subdivision to initiate an enforcement action against an operator or excavator.

2.1 Sec. 2. Minnesota Statutes 2022, section 216D.04, subdivision 1, is amended to read:

2.2 Subdivision 1. **Notice required; contents.** (a) Except in an emergency, an excavator
2.3 shall and a land surveyor may contact the notification center and provide notice at least 48
2.4 hours, excluding the date of the notice, Saturdays, Sundays, and holidays and not more than
2.5 14 calendar days before beginning any excavation or boundary survey. An excavation or
2.6 boundary survey begins, for purposes of this requirement, the first time excavation or a
2.7 boundary survey occurs in an area that was not previously identified by the excavator or
2.8 land surveyor in the notice.

2.9 (b) The notice may be oral or written, and must contain the following information:

2.10 (1) the name of the individual providing the notice;

2.11 (2) the precise location of the proposed area of excavation or survey;

2.12 (3) the name, address, and telephone number of the individual or individual's company;

2.13 (4) the field telephone number, if one is available;

2.14 (5) the type and extent of the activity;

2.15 (6) whether or not the discharge of explosives is anticipated;

2.16 (7) the date and time when the excavation or survey is to commence; and

2.17 (8) the estimated duration of the activity.

2.18 Sec. 3. Minnesota Statutes 2022, section 216D.04, subdivision 3, is amended to read:

2.19 Subd. 3. **Locating underground facility; operator.** (a) Prior to the excavation start
2.20 time on the notice, or an alternate time agreed to in writing between the operator and
2.21 excavator, an operator shall locate and mark or otherwise provide the approximate horizontal
2.22 location of the underground facilities of the operator and provide readily available information
2.23 regarding the operator's abandoned and out-of-service underground facilities as shown on
2.24 maps, drawings, diagrams, or other records used in the operator's normal course of business,
2.25 without cost to the excavator. The excavator shall determine the precise location of the
2.26 underground facility, without damage, before excavating within two feet of the marked
2.27 location of the underground facility.

2.28 (b) Within 96 hours or the time specified in the notice, whichever is later, after receiving
2.29 a notice for boundary survey from the notification center, excluding Saturdays, Sundays,
2.30 and holidays, unless otherwise agreed to between the land surveyor and operator, an operator

3.1 shall locate and mark or otherwise provide the approximate horizontal location of the
3.2 underground facilities of the operator, without cost to the land surveyor.

3.3 (c) For the purpose of this section, the approximate horizontal location of the underground
3.4 facilities is a strip of land two feet on either side of the underground facilities.

3.5 (d) Markers used to designate the approximate location of underground facilities must
3.6 follow the current color code standard used by the American Public Works Association.

3.7 (e) If the operator cannot complete marking of the excavation or boundary survey area
3.8 before the excavation or boundary survey start time stated in the notice, the operator shall
3.9 promptly contact the excavator or land surveyor.

3.10 (f) After December 31, 1998, operators shall maintain maps, drawings, diagrams, or
3.11 other records of any underground facility abandoned or out-of-service after December 31,
3.12 1998.

3.13 (g) An operator or other person providing information pursuant to this subdivision is
3.14 not responsible to any person, for any costs, claims, or damages for information provided
3.15 in good faith regarding abandoned, out-of-service, or private or customer-owned underground
3.16 facilities.

3.17 Sec. 4. Minnesota Statutes 2022, section 216D.05, is amended to read:

3.18 **216D.05 PRECAUTIONS TO AVOID DAMAGE.**

3.19 An excavator ~~shall~~ must:

3.20 (1) plan the excavation to avoid damage to and minimize interference with underground
3.21 facilities in and near the construction area;

3.22 (2) ~~use white markings for proposed excavations except where it can be shown that it~~
3.23 ~~is not practical~~ communicate the location of the proposed excavation in sufficient detail by
3.24 performing at least one of the following:

3.25 (i) white-line the area of a proposed excavation, with white paint, white flags, or both,
3.26 before giving notice to the notification system; or

3.27 (ii) digitally mark the area of a proposed excavation on a map submitted to the notification
3.28 center, in a manner that is equivalent to physical markings;

3.29 (3) maintain a clearance between an underground facility and the cutting edge or point
3.30 of any mechanized equipment, considering the known limit of control of the cutting edge
3.31 or point to avoid damage to the facility;

4.1 (4) provide support for underground facilities in and near the construction area, including
4.2 during backfill operations, to protect the facilities; and

4.3 (5) conduct the excavation in a careful and prudent manner.

4.4 Sec. 5. Minnesota Statutes 2022, section 299F.60, subdivision 1, is amended to read:

4.5 Subdivision 1. **Money penalty.** Any person who violates any provision of sections
4.6 299F.56 to 299F.641, or any rule issued thereunder, is subject to a civil penalty to be imposed
4.7 by the commissioner not to exceed \$100,000 for each violation for each day that the violation
4.8 persists, ~~except that the maximum civil penalty must not exceed \$1,000,000 for any related~~
4.9 ~~series of violations~~ the maximum penalties listed in Code of Federal Regulations, title 49,
4.10 part 190, and any successor regulations and standards that may be amended or adopted.

4.11 Sec. 6. Minnesota Statutes 2022, section 299J.16, subdivision 1, is amended to read:

4.12 Subdivision 1. **Civil penalty.** (a) A pipeline operator who violates section 299J.07,
4.13 subdivision 1, or 299J.15, or the rules of the commissioner implementing those sections,
4.14 shall forfeit and pay to the state a civil penalty in an amount to be determined by the court,
4.15 up to \$100,000 for each day that the operator remains in violation, ~~subject to a maximum~~
4.16 ~~of \$1,000,000 for a related series of violations~~ the maximum penalties listed in Code of
4.17 Federal Regulations, title 49, part 190, and any successor regulations and standards that
4.18 may be amended or adopted.

4.19 (b) The penalty provided under this subdivision may be recovered by an action brought
4.20 by the attorney general at the request of the commissioner, in the name of the state, in
4.21 connection with an action to recover expenses of the director under section 299J.13,
4.22 subdivision 4:

4.23 (1) in the District Court of Ramsey County; or

4.24 (2) in the county of the defendant's residence.