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HOUSE BILL NO. 913

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 56-265.19 and 56-265.25 of the Code of Virginia, relating to the Underground Utility Damage Prevention Act; duties of operator; liability of excavator.

Patron—Brewer

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 56-265.19 and 56-265.25 of the Code of Virginia are amended and reenacted as follows:**
§ 56-265.19. Duties of operator; regulations.

A. If a proposed excavation or demolition is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint, flags, or a combination thereof. The operator shall mark the underground utility line and report the marking status to the excavator-operator information exchange system by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, unless the operator is unable to do so due to extraordinary circumstances. If the operator is unable to mark the location within the time allowed under this section due to extraordinary circumstances, the operator shall notify directly the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked. The deferral to mark for extraordinary circumstances shall be no longer than 96 hours from 7:00 a.m. on the next working day following notice to the notification center, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the notification center of any deferral.

B. If a proposed excavation or demolition is not planned in such proximity to the operator's underground utility lines that the utility line may be damaged, the operator shall so report to the notification center's excavator-operator information exchange system no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center.

C. An operator shall participate in all preplanning and preconstruction meetings originated by state, county or municipal authorities relating to proposed construction projects which may affect the operator's existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning and preconstruction meetings.

D. Any contract locator acting on behalf of an operator and failing to perform the duties imposed by this chapter shall be subject to the liabilities in § 56-265.25 and the civil penalties in § 56-265.32.

E. Locators shall be trained in applicable locating industry standards and practices no less stringent than the National Utility Locating Contractors Association's locator training standards and practices. Each locator's training shall be documented. Such documents shall be maintained by the operator or contract locator.

F. The Commission shall be authorized to adopt regulations designating: (i) letters for each operator to be used in conjunction with marking of underground utility lines, and (ii) symbols for marking of underground utility lines, in compliance with subsection B of § 56-265.17:3. Such letter designation and marking symbols shall be in accordance with industry standards.

G. For underground utility lines abandoned after July 1, 2002, operators shall make a reasonable attempt to keep records of these abandoned utility lines, excluding service lines connected to a single-family dwelling unit. When an operator has knowledge that the operator's abandoned utility lines may be present within the area of the proposed excavation, the operator shall provide a response to the excavator-operator information exchange system. Such information regarding abandoned lines shall be for informational purposes only. An operator shall not be liable to any person, or subject to civil penalties, as a result of the operator's providing incorrect information regarding abandoned lines or the subsequent use of such information. The excavator-operator information exchange system may refer any person with concerns about the accuracy of information regarding abandoned lines to the appropriate operator.

H. An operator shall respond to an emergency notice as soon as possible but no later than three hours from the excavator's call to the notification center.

I. No operator shall give false or misleading information to the notification center.

J. Any operator of residential telecommunications or cable television service, after receiving

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59 *notification of an interruption in service due to the installation of broadband service at a given*
60 *premises, shall restore telecommunications or cable television service, such that the premises shall be*
61 *able to telephone emergency services by dialing 911, within two days of receiving such notification.*

62 *K. The Commission shall, upon an informal complaint to the Division of Utility and Railroad Safety,*
63 *investigate, and shall issue a rule to show cause against any operator in violation of subdivisions I or J.*
64 *The Commission may recover the costs of its investigation against any party found in violation, and any*
65 *costs recovered may be, in the discretion of the Commission, deposited into the Underground Utility*
66 *Damage Prevention Special Fund established pursuant to § 56-265.32.*

67 **§ 56-265.25. Liability of operator and excavator; penalties.**

68 *A. 1. If any underground utility line is damaged as a proximate result of a person's failure to comply*
69 *with any provision of this chapter, that person shall be liable to the operator of the underground utility*
70 *line for the total cost to repair the damaged facilities as that cost is normally computed by the operator,*
71 *provided the operator is a member of the notification center covering the area in which the damage to*
72 *the utility line takes place. The liability of such a person for such damage shall not be limited by reason*
73 *of this chapter.*

74 *2. Any person who willfully fails to notify the notification center of proposed excavation or*
75 *demolition shall be liable to the operator as provided in subsection A of § 56-265.17.*

76 *3. If, after receiving proper notice, an operator fails to discharge a duty imposed by any provision of*
77 *this chapter and an underground utility line of such operator is damaged, as a proximate result of the*
78 *operator's failure to discharge such duty, by any person who has complied with all of the provisions of*
79 *this chapter, such person shall not be so liable.*

80 *B. If an underground utility line of an operator is damaged, as the proximate result of the operator's*
81 *failure to comply with any provision of this chapter, by any person who has complied with the*
82 *provisions of this chapter, the operator shall be liable to such person for the total cost to repair any*
83 *damage to the equipment or facilities of such person resulting from such damage to the operator's*
84 *underground utility line.*

85 *C. Except as specifically set forth herein, the provisions of this chapter shall not be construed to*
86 *either abrogate any rights, duties, or remedies existing under law or create any rights, duties, defenses,*
87 *or remedies in addition to any rights, duties, or remedies existing under law.*

88 *D. Notwithstanding any other provision of law, when an excavator is installing facilities for purposes*
89 *of broadband service and damages a utility line used for residential telecommunications or cable*
90 *television, including an abandoned line, the operator shall indemnify and hold harmless the excavator*
91 *for any damage, and no excavator shall be liable under this chapter or otherwise for any such damage*
92 *occurring on or after July 1, 2022.*