

1 State of Arkansas *As Engrossed: H3/12/13 S4/2/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1583

4

5 By: Representative Barnett

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## For An Act To Be Entitled

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AN ACT TO AMEND THE ARKANSAS UNDERGROUND FACILITIES  
9 DAMAGE PREVENTION ACT; AND FOR OTHER PURPOSES.

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## Subtitle

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TO AMEND THE ARKANSAS UNDERGROUND  
14 FACILITIES DAMAGE PREVENTION ACT.

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 *SECTION 1. Arkansas Code § 14-271-102(4), concerning the definition of*  
20 *"excavate" or "excavation" under the Arkansas Underground Facilities Damage*  
21 *Prevention Act, is amended to read as follows:*

22 *(4) "Excavate" or "excavation" means to dig, compress, or remove*  
23 *earth, rock, or other materials in or on the ground by use of mechanized*  
24 *equipment, tools manipulated only by human or animal power, or blasting,*  
25 *~~including, but not necessarily limited to,~~ without limitation augering,*  
26 *boring, backfilling, drilling, grading, pile-driving, plowing in, pulling in,*  
27 *trenching, tunneling, and plowing;*

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29 *SECTION 2. Arkansas Code § 14-271-104(a)(2), concerning penalties and*  
30 *civil remedies under the Arkansas Underground Facilities Damage Prevention*  
31 *Act, is amended to read as follows:*

32 *(2) Operators of underground pipeline facilities and excavators*  
33 *shall, upon violation of any applicable requirements of 49 C.F.R. Part 198,*  
34 *Subpart C, or 49 U.S.C. § 60114(b) concerning marking facilities, § 60114(d)*  
35 *concerning applicability to excavators, or § 60118(a) concerning general*  
36 *waivers, as in effect on February 2013, unless excepted under § 14-271-109,*



1 and damage of an interstate or intrastate natural gas pipeline facility or an  
2 interstate or intrastate hazardous liquid pipeline facility, be subject to  
3 civil penalties in an amount not to exceed two (2) times the amount of  
4 property damage to the interstate or intrastate natural gas pipeline facility  
5 or an interstate or intrastate hazardous liquid pipeline facility up to a  
6 maximum of ~~twenty-five thousand dollars (\$25,000)~~ two hundred thousand  
7 dollars (\$200,000) for each violation for each day that the violation  
8 persists, except that the maximum civil penalty shall not exceed ~~five hundred~~  
9 thousand dollars (\$500,000) two million dollars (\$2,000,000) for any related  
10 series of violations.

11  
12 SECTION 3. Arkansas Code 14-271-104(f), concerning penalties and civil  
13 remedies under the Arkansas Underground Facilities Damage Prevention Act, is  
14 amended to read as follows:

15 (f) Neither the State Highway Commission, nor the Arkansas State  
16 Highway and Transportation Department, nor their officers, ~~agents, or~~  
17 employees, ~~or contractors,~~ nor the county judges or their road departments  
18 ~~shall be~~ are subject to the provisions of this section.

19  
20 SECTION 4. Arkansas Code § 14-271-109(a), concerning notice to One  
21 Call Center and exceptions under the Arkansas Underground Facilities Damage  
22 Prevention Act, is amended to read as follows:

23 (a) Compliance with notice requirements of § 14-271-112 is not  
24 required for:

25 (1) The moving of earth that is not on a right-of-way or within  
26 an easement of an operator by tools manipulated only by human or animal  
27 power;

28 (2) The moving of earth by an operator that is on a right-of-way  
29 or within an easement of the operator by tools only manipulated by human  
30 power and exclusively for the purposes of system maintenance and leak  
31 detection;

32 ~~(2)(3)~~ (3) Any agricultural purposes, including any form of  
33 cultivation for agricultural purposes, digging for postholes on private  
34 property, construction and maintenance of farm ponds, land clearing, or other  
35 normal agricultural purposes ~~which, that~~ are not on a right-of-way of an  
36 operator;

1           ~~(3) Work by a public agency or its contractors on a~~  
2 ~~preengineered project;~~

3           (4) The opening of a grave in a cemetery that is not on a right-  
4 of-way of an operator; or

5           (5) Routine road work and general maintenance as performed in  
6 the right-of-way by state or county maintenance departments, but excluding  
7 any work or maintenance involving ~~change of grade or clearing or widening~~  
8 ~~drainage ditches~~ any demolition or excavation.

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10           SECTION 5. Arkansas Code Title 5, Chapter 69, Subchapter 1, is amended  
11 to add an additional section to read as follows:

12           5-69-103. Pipelines and pipeline facilities.

13           (a) A person upon conviction is guilty of a Class D felony if the  
14 person knowingly violates:

15                 (1) § 14-271-110(a);

16                 (2) An order, safety standard, rule, or regulation of the  
17 Arkansas Public Service Commission pursuant to § 23-15-205;

18                 (3) § 23-15-206(b);

19                 (4) § 23-15-206(c);

20                 (5) § 23-15-208(a); or

21                 (6) § 23-15-209(a).

22           (b) A person upon conviction is guilty of a Class D felony if the  
23 person knowingly violates §14-271-112(a) and:

24                 (1) With respect to the violation, damages or destroys an  
25 interstate or intrastate natural gas pipeline facility that results in  
26 serious physical injury or actual damage to property of more than fifty  
27 thousand dollars (\$50,000);

28                 (2) With respect to the violation, damages or destroys an  
29 interstate or intrastate natural gas pipeline facility, knows or has reason  
30 to know of the damage or destruction, and does not report the damage or  
31 destruction promptly to the operator of the interstate or intrastate natural  
32 gas pipeline facility or to local law enforcement authorities; or

33                 (3) With respect to the violation, damages an intrastate  
34 hazardous liquid pipeline facility that results in the release of more than  
35 fifty (50) barrels of hazardous liquid.

36           (c)(1) A person who knowingly engages in the unauthorized disposal of

1 solid waste within the right-of-way of an interstate or intrastate pipeline  
2 facility or an interstate or intrastate hazardous liquid pipeline facility  
3 upon conviction is guilty of a Class D felony.

4 (2)(A) As used in this subsection, "solid waste" means garbage,  
5 refuse, or sludge from a waste treatment plant, water supply treatment plant,  
6 or air pollution control facility or other discarded material, including  
7 without limitation solid, liquid, semisolid, or contained gaseous material  
8 resulting from industrial operations, commercial operations, mining  
9 operations, agricultural operations, or other community activities.

10 (B) "Solid waste" does not include solid or dissolved  
11 material in domestic sewage or solids discovered in materials in irrigation  
12 return flows or industrial discharges that are point sources subject to  
13 permits under 33 U.S.C. § 1342, as it existed on January 1, 2013, or source,  
14 special nuclear, or byproduct material as defined by 42 U.S.C. § 2011 et  
15 seq., as it existed on January 1, 2013.

16 (d) A person who knowingly damages or destroys an interstate or  
17 intrastate pipeline facility or an interstate or intrastate hazardous liquid  
18 pipeline facility upon conviction is guilty of a:

19 (1) Class A misdemeanor if the amount of actual damage is one  
20 thousand dollars (\$1,000) or less;

21 (2) Class D felony if the amount of actual damage is more than  
22 one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000);

23 (3) Class C felony if the amount of actual damage is more than  
24 five thousand dollars (\$5,000) but less than twenty-five thousand dollars  
25 (\$25,000); or

26 (4) Class B felony if the amount of actual damage is more than  
27 twenty-five thousand dollars (\$25,000).

28 (e) A person who knowingly tampers with, damages, or destroys a  
29 pipeline sign or right-of-way marker required by law or rule of the state  
30 upon conviction is guilty of a:

31 (1) Class A misdemeanor if the amount of actual damage is one  
32 thousand dollars (\$1,000) or less;

33 (2) Class D felony if the amount of actual damage is more than  
34 one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000);

35 (3) Class C felony if the amount of actual damage is more than  
36 five thousand dollars (\$5,000) but less than twenty-five thousand dollars

1 (\$25,000); or  
2 (4) Class B felony if the amount of actual damage is more than  
3 twenty-five thousand dollars (\$25,000).

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/s/Barnett

**APPROVED: 04/18/2013**