

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/12/13

A Bill

HOUSE BILL 1583

5 By: Representative Barnett
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS UNDERGROUND FACILITIES
9 DAMAGE PREVENTION ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE ARKANSAS UNDERGROUND
12 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;*
28

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 *requirements for compliance and waivers, as in effect on February 1, 2013,*



1 unless excepted under § 14-271-109, be subject to civil penalties not to
2 exceed ~~twenty five thousand dollars (\$25,000)~~ two hundred thousand dollars
3 (\$200,000) for each violation for each day that the violation persists,
4 except that the maximum civil penalty shall not exceed ~~five hundred thousand~~
5 ~~dollars (\$500,000)~~ two million dollars (\$2,000,000) for any related series of
6 violations.

7
8 *SECTION 3.* Arkansas Code 14-271-104(f), concerning penalties and civil
9 remedies under the Arkansas Underground Facilities Damage Prevention Act, is
10 amended to read as follows:

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

15
16 *SECTION 4.* Arkansas Code § 14-271-109(a), concerning notice to One
17 Call Center and exceptions under the Arkansas Underground Facilities Damage
18 Prevention Act, is amended to read as follows:

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

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

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

28 ~~(2)(3)~~ (3) Any agricultural purposes, including any form of
29 cultivation for agricultural purposes, digging for postholes on private
30 property, construction and maintenance of farm ponds, land clearing, or other
31 normal agricultural purposes ~~which, that~~ are not on a right-of-way of an
32 operator;

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

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

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

5
6 SECTION 5. Arkansas Code Title 14, Chapter 271, Subchapter 1, is
7 amended to add an additional section to read as follows:

8 14-271-116. Criminal penalties.

9 (a) A person shall be fined under Title 18 of the United States Code,
10 imprisoned for not more than five (5) years, or both, if the person:

11 (1) Knowingly and willfully engages in an excavation or
12 demolition activity:

13 (A) Without first notifying the One Call Center as
14 required by this chapter to establish the location of underground facilities
15 in the excavation or demolition area; or

16 (B) Without heeding the appropriate location information
17 required by this chapter or any markings the operator of a pipeline facility
18 establishes; and

19 (2) Subsequently damages:

20 (A) A pipeline facility, as defined in 49 U.S.C. § 60101,
21 as in effect on February 1, 2013, that results in death, serious bodily harm,
22 or actual damage of more than fifty thousand dollars (\$50,000); or

23 (B) A pipeline facility, as defined in 49 U.S.C. § 60101,
24 as in effect on February 1, 2013, and knows or has reason to know of the
25 damage, but does not report the damage promptly to the operator of the
26 pipeline facility and to other appropriate authorities.

27 (b) Penalties under this section may be reduced in the case of a
28 violation that is promptly reported by the violator.

29 (c) This section does not apply to the following persons or entities
30 or their officers or employees:

31 (1) The State Highway Commission;

32 (2) The Arkansas State Highway and Transportation Department;

33 (3) County judges; or

34 (4) County road departments.

35
36 /s/Barnett