

SENATE BILL NO. 2227

Introduced by

Senators Heitkamp, Traynor

Representative Carlson

1 A BILL for an Act to amend and reenact section 49-23-06 of the North Dakota Century Code,
2 relating to damages to underground facilities.

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

4 **SECTION 1. AMENDMENT.** Section 49-23-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **49-23-06. Damage to facilities - Penalty.**

- 7 1. a. If any damage occurs to an underground facility or its protective covering, the
8 excavator shall notify the operator as soon as reasonably possible. When the
9 operator receives a damage notice, the operator shall dispatch, as soon as
10 reasonably possible, personnel to the damage area to investigate. If the
11 damage endangers life, health, or property, the excavator responsible for the
12 work shall take immediate action to protect the public and property and to
13 minimize the hazard until arrival of the operator's personnel or until
14 emergency responders have arrived and taken charge of the damaged area.
- 15 b. An excavator shall delay backfilling in the immediate area of the damaged
16 underground facilities until the damage has been investigated by the operator,
17 unless the operator authorizes otherwise. The repair of damage must be
18 performed by the operator or by qualified personnel authorized by the
19 operator.
- 20 c. An excavator who knowingly damages an underground facility and who does
21 not notify the operator as soon as reasonably possible or who backfills in
22 violation of subdivision b is guilty of a class A misdemeanor.
- 23 2. a. If an excavator fails to comply with this chapter or damages an underground
24 facility, the excavator is liable for all damages caused by the failure to comply

1 with this chapter and for all damages to the facilities and must reimburse the
2 operator for the cost of repair and restoration, loss of product, and interruption
3 of service occurring because of the damage or injury to the facilities, together
4 with reasonable costs and expenses of suit, including reasonable attorney's
5 fees.

6 b. Reimbursement to the operator under this subsection is not required if the
7 damage to the underground facility was caused by the sole negligence of the
8 operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

9 ~~3. It is prima facie evidence of the excavator's negligence in a claim for relief if~~
10 ~~damage to the underground facilities of an operator resulted from excavation and~~
11 ~~the excavator failed to give an excavation notice under section 49-23-04 or provide~~
12 ~~support as required by section 49-23-05.~~