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HOUSE BILL NO. 2539

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 59.1-407 through 59.1-411 and 59.1-414 of the Code of Virginia, relating to the Overhead High Voltage Line Safety Act.

Patrons—McDonnell, Hull and Scott; Senator: Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-407 through 59.1-411 and 59.1-414 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-407. Definitions.

As used in this chapter:

"Covered equipment" means any mechanical equipment or hoisting equipment, any part of which is capable of vertical, lateral or swinging motion that could cause the equipment to be operated within ten feet of an overhead high voltage line, including but not limited to cranes, derricks, power shovels, drilling rigs, excavating equipment, hay loaders, hay stackers, combines, grain augers and mechanical cotton pickers.

"Notice" means actual notification in the manner prescribed in § 59.1-411.

"Overhead high voltage line" means all above ground bare or insulated electrical conductors of voltage in excess of 600 volts measured between conductors or measured between a conductor and the ground, except those conductors that are de-energized and grounded or that are enclosed in rigid metallic conduit or flexible armored conduit.

"Person" means natural person, firm, business association, company, partnership, corporation or other legal entity.

"Person responsible for the work to be done" means the person performing or controlling the job or activity work.

"Warning sign" means a weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering reading as follows: "WARNING — UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF OVERHEAD HIGH VOLTAGE LINES" or such other equally effective warning signs as may be approved for use by the Virginia Safety and Health Codes Board or the Commissioner of Labor and Industry.

"Work" means the physical act of performing or preparing to perform any activity under, over, by, or near overhead high voltage lines, including, but not limited to, the operation, erection, handling, storage, or transportation of any tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus, or the moving of any house or other structure, whenever such activity is done by a person or entity in pursuit of his trade or business.

"Working day" means every day except Saturdays, Sundays, and legal state and federal holidays.

§ 59.1-408. Prohibited activities.

Unless danger of contact with overhead high voltage lines has been guarded against as provided by § 59.1-410:

1. No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work or activity upon any land, building, highway or other premises, as defined in § 59.1-407, that will cause (i) such agent, employee or other any person or tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus to be placed within six feet (1.8 meters) of any overhead high voltage line or (ii) any part of any tool or material used by the agent, employee or other person to be brought within six 10 feet (1.8 3.1 meters) of any overhead high voltage line.

2. No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment within tenA clearance greater than 10 feet (3.1 meters) of any overhead high voltage line or such greater clearance as may be required under the circumstances by the occupational safety and health regulations adopted by the Safety and Health Codes Board pursuant to Chapter 3 (§ 40.1-22 et seq.) of Title 40.1 and enforced by the Commissioner of Labor and Industry. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with the height restriction imposed by § 46.2-1110.

§ 59.1-409. Warning signs.

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59 A. No person shall, individually or through an agent or employee, or as an agent or employee,
60 operate any covered equipment in the proximity of an overhead high voltage line unless there is posted
61 and maintained a warning sign placed as follows:

62 1. Within the equipment and readily visible and legible to the operator of such equipment when at
63 the controls of such equipment; and

64 2. On the outside of equipment in such numbers and locations as to be readily visible and legible at
65 twelve feet to other persons engaged in the work operations.

66 B. It shall be the duty and responsibility of the owner, lessee, or employer of any covered equipment
67 to acquaint themselves, and their employees who will be operating the equipment or will be engaged in
68 the work operations, with the provisions of this chapter and the regulations prescribed and promulgated
69 pursuant to it.

70 § 59.1-410. Temporary safety arrangements.

71 A. When any person desires to carry on any work or activity in closer proximity to any overhead
72 high voltage line than permitted by this chapter, the person responsible for the work ~~to be done~~ shall
73 promptly notify the owner or operator of the high voltage line *on a working day* in the manner
74 prescribed in § 59.1-411 ~~at least forty-eight hours, excluding Saturday, Sunday and legal state and~~
75 ~~federal holidays, or in emergency situations, including police, fire and rescue emergencies, as soon as~~
76 ~~possible under the circumstances, prior to the time work is to be commenced.~~ The work shall be
77 performed only after satisfactory mutual arrangements have been negotiated between the owner or the
78 operator of the lines or both and the person responsible for the work ~~to be done~~. The negotiations shall
79 proceed promptly and in good faith with the goal of accommodating the requested work consistent with
80 the owner's or operator's service needs and the duty to protect the public from the danger of overhead
81 high voltage lines. The owner or operator of the lines shall initiate the agreed upon safety arrangements
82 within ~~five~~ 5 working days *from the date of the request of the person responsible for the work. The*
83 *owner and operator of the lines shall complete the work promptly and without interruption, consistent*
84 *with the owner's or operator's service needs. Arrangements may include (i) placement of temporary*
85 *mechanical barriers separating and preventing contact between material, equipment, or persons and*
86 *overhead high voltage lines, (ii) temporary de-energization and grounding, (iii) temporary relocation or*
87 *raising of the lines, or (iv) other such measures found to be appropriate in the judgment of the owner or*
88 *operator of the lines. The person responsible for the work shall ensure that the temporary safety*
89 *arrangements described in this subsection are completed prior to the commencement of any such work.*

90 B. The actual expense incurred by any owner or operator of overhead high voltage lines in taking
91 precautionary measures as set out in subsection A of this section, including the wages of its workers
92 involved in making safety arrangements, shall be paid by the person responsible for the work ~~to be done~~
93 or a person subject to the following exceptions:

94 1. In the case of property used for residential purposes, such actual expenses shall be limited to those
95 in excess of \$1,000;

96 2. Whenever any owner or operator of an overhead high voltage line has located its facilities within
97 a public highway or street right-of-way and the work is performed by or for the Department of
98 Transportation or a city, county or town, the actual expenses shall be the responsibility of the owner or
99 operator of the overhead high voltage lines, unless the owner or operator can provide evidence of prior
100 rights or there is a prior written agreement specifying cost responsibility; and

101 3. Whenever it is determined by the Department of Transportation or a city, county or town that the
102 temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be
103 the responsibility of the contractor.

104 C. When requested by a person, an owner or operator of a high voltage line shall provide within a
105 reasonable period of time an estimate of the scope and cost of any required safety arrangements.

106 § 59.1-411. Notification.

107 A. Every notice served by any person on an owner or operator of an overhead high voltage line
108 pursuant to § 59.1-410 shall contain the following information:

109 1. The name of the individual serving such notice;

110 2. The ~~location~~ address of the ~~proposed~~ tract or parcel of land upon which the work is to take place
111 *with sufficient particularity to enable the owner or operator of the overhead high voltage lines to*
112 *ascertain the precise tract or parcel of land involved;*

113 3. The name, address and *work day* telephone number of the person responsible for the work;

114 4. The field telephone number at the site of such work, if one is available;

115 5. The type and extent of the proposed work;

116 6. The name of the person for whom the proposed work is being performed;

117 7. The time and date of the notice; and

118 8. The ~~approximate date and time when~~ *dates upon which the work is to begin will commence and*
119 *will be completed.*

120 B. If the notification required by this chapter is made by telephone, a record of such notification

shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this chapter.

C. To facilitate notification required by this chapter, every operator of overhead high voltage lines shall publish a phone number or numbers which, when called, will serve to provide initial notification of the need to arrange for the temporary safety arrangements pursuant to this chapter.

D. If, after the arrangements required by § 59.1-410 are made, a delay in commencing the work is encountered, then the person responsible for the work shall be required to give a new notice as specified in this section.

§ 59.1-414. Application.

~~Except in conjunction with the enforcement~~ A. The owner or operator of overhead high voltage lines shall not be liable for damage or loss to any person or property resulting from work within 10 feet of overhead high voltage lines, unless notice has been given as required by § 59.1-411 and the owner or operator of the overhead high voltage line has failed to comply with the provisions of § 59.1-410.

B. Any person responsible for the work who violates the requirements of § 59.1-408 and in accordance with this chapter or an action by an owner or operator whose subsequent activities within the vicinity of an overhead high voltage power line to recover the cost of temporary safety arrangements or for lines result in damage to its utility facilities as provided for in this chapter, the provisions of this chapter or result in injury or damage to any person or property shall not be construed either to abrogate indemnify the owner or diminish any rights, duties, defenses or remedies existing under law or to create or expand any rights, duties, defenses or remedies in addition to rights, duties, defenses or remedies existing under law, nor shall any violation of this chapter constitute negligence per se in any civil action operator of such overhead high voltage lines against all claims arising from personal injury including death, property damage, or service interruptions, together with attorneys' fees and other costs incurred in defending any such claims resulting from work in violation of § 59.1-408.

C. Except as provided in subsection A, nothing in this chapter shall be construed or applied so as to alter the duty or degree of care applicable to owners or operators of overhead high voltage lines with respect to damage to property, personal injury or death.

D. Except for the rights provided to the owner or operator of the overhead high voltage line in subsection B, nothing contained in this chapter shall be construed to alter, amend, restrict, or limit the exclusive remedy provisions of § 65.2-307.