

SENATOR KRISTENSEN: Then...then the excavator has a very good defense to say I was relying on the best possible information that I had, and that I'm relieved from that responsibility because I relied on the best information I had at the time.

SENATOR WEHRBEIN: Okay, now how would this change under this proposed law?

SENATOR KRISTENSEN: If you have strict liability and you fail, let's say the first example is you do not notify them, you just go out and dig, it doesn't matter whether there was signage, or whether it was in bare ground that you didn't know, the mere fact that you hit it is you're responsible for damages if you did not call. If you called and you didn't wait the two days, or let's say that you dug and you hit it, you'll be under this negligence standard that you and I just talked about, depends, depends on what information you had, unless they mismarked it. If they mismarked it, you're totally relieved of responsibility.

SENATOR WEHRBEIN: Okay, well, my real question is, and I just had a conversation to D.C., I hope it's a legitimate phone-call on the part of Mr. Breslow, but they're under the impression that if they were not mandated into this bill, they would still return to what they call common law, and that would be liability for someone else's personal property, regardless of whether they were notified or not. Now, would this bill change that?

SENATOR KRISTENSEN: Well, I think they return under the ordinary negligence, which is you got...

SENATOR WEHRBEIN: I would assume that would be the definition.

SENATOR KRISTENSEN: Yeah, yeah. And that is you've got a duty, and if you don't...if you break that duty, then if we can prove that you caused that breach, then you're responsible for the injuries or the damages. This does change that, yes, because of the nature of we want people to call. And if you call, you're going to get protection. If you don't call, you assume the risk and the responsibility.

SENATOR WEHRBEIN: Okay, so this would change...

SENATOR KRISTENSEN: Yes, this changes...