

***** Please note new changes in the law, indicated in light blue highlight, which took effect June, 2007. The old section of the law is crossed out, showing a comparison of the changes *****

***** Please note new changes in the law, indicated in green highlight, which took effect July 1st, 2006. The old section of the law is crossed out, showing a comparison of what changed *****

***** Please note new changed in the law, indicated in blue highlight that took effect April 26th, 2001 *****

***** Please note that new changes in the law are indicated in red highlight and took effect July 1st, 1999. *****

TENNESSEE STATE LAW

Chapter 31

Underground Utility Damage Prevention Act

As Amended by Tennessee Public Chapter 223

Section

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65-31-101. Title

This chapter may be cited as the "Underground Utility Damage Prevention Act."

65-31-102. Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Calendar Day" means a twenty-four (24) hour period beginning with the date and time that a notification to excavate or demolish is to begin, including Monday through Sunday and all holidays.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of any protective coating, housing or other protective device of an underground utility, the partial or complete severance of an underground utility and rendering any underground utility inaccessible;

(3) "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment or discharge of explosives;

(4) "Excavate" or "excavation" means an operation for the purpose of the movement, placement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, and including augering, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but not including the tilling of soil for agricultural purposes; **or the digging of holes for fence posts on private property in any area that is not located within a recorded easement of an operator; or that is not located within one hundred feet (100') of the edge of the pavement of a street or highway.** ~~or the digging of holes for fence posts on private property.~~ Agricultural purposes shall include surface activities such as plowing, planting and combining, but does not include blasting, setting drainage tiles, subsoiling or other sub-surface activities;

(5) "Impending emergency" means circumstances potentially dangerous to life, health, property, environment, or the repair or restoration of service, which would likely develop into an emergency, as defined in section 65-31-109, if excavation is not initiated within seventy-two (72) hours.

(6) "Location" means the proposed area for which digging or excavating is scheduled within three (3) to ten (10) working days; such area not to exceed two thousand (2,000) feet in length unless an excavator and an operator, or an operator's designated representative, such as a one-call service, agree to a larger area;

(7) "Mechanized equipment" means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe;

(8) "One-Call Service" means a telephone notification service described in §65-31-107 that provides services to its members for the purposes of receiving and distributing notification regarding planned excavations or demolitions that are required under this chapter;

(9) "Operator" means any person who owns or operates a utility;

(10) "Person" means any individual; any corporation, partnership, association or other entity organized under the laws of any state; any state; any subdivision or instrumentality of a state; and any employee, agent or legal representative thereof;

(11) "Proposed area of excavation" means a general surface location which excavators are to furnish to operators of underground utilities or to a one-call service as specified in §65-31-106. The proposed area of excavation does not constitute a specified depth for the purpose of complying with the provisions of this chapter;

(12) "Utility" means any line system or facilities used for producing, storing, conveying, transmitting or distributing communications, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, sewerage and other underground utility facilities; and

(13) "Working day" means every day except Saturday, Sunday and national and legal state holidays. For purposes of measuring any period of time that requires notice under this chapter, a working day shall commence at the time the written notice or telephone call is received and shall expire at the same time on the next working day.

65-31-103. Permits Do Not Relieve Liability

A permit issued pursuant to law authorizing excavation or demolition operations shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter.

65-31-104. Excavations Without Ascertainment of Underground Utilities Prohibited

(a) Except as provided in §65-31-109, no person may excavate in a street, highway, public space, a private easement of an operator, **or within one hundred feet (100') of the edge of the pavement of a street or highway**, or demolish a building without giving the notice required by §65-31-106 in the manner prescribed by such section.

(b) A general DIG certificate shall be issued for agricultural land as defined in §67-5-104 that lies outside a street, highway, public space or a private easement of an operator but within one hundred feet (100') of the edge of the pavement of a street or highway when no utilities are located within such area. Such general certificate shall be valid until title to the land is transferred or until a utility line is located within such area.

65-31-105. Filing Requirements For Utility Operators

(a) ~~Each operator having underground facilities (including those facilities that have been abandoned in place by the operator but not yet physically removed) in a county shall file a notice with the Register of Deeds of such county which states that such operator has underground utilities located in that county, the name of the operator and the name, title, address and telephone number of its representative designated to receive the written or telephonic notice of intent required by §65-31-106. It is only necessary that such notice shall consist of the fact that the operator possesses underground facilities in the listed counties.~~ Each operator, except operators participating in a one-call service, having underground facilities in a county, including those facilities that have been abandoned in place by the operator but not yet physically removed, shall file a notice with the register of deeds of such county which states that such operator has underground utilities located in that county, the name of the operator and the name, title, address, telephone number and e-mail address (provided the representative has an e-mail address) of its representative designated to receive the written, telephonic or electronic mail (e-mail) notice of intent required by § 65-31-106. It is not necessary that the operator list the exact physical location of each and every item of its underground facilities in such counties.

(b) Changes in any of the information contained in the list filed under subsection (a) of this section shall be filed by the operator with the Register of Deeds of the county, or the Register of Deeds of each county in which these utilities are located, within thirty (30) working days of the change.

(c) A filing fee as determined by the Register of Deeds may accompany the filing. These filings shall be filed and an index shall be maintained and kept up to date by the Register of Deed's office.

(d) The Register of Deeds shall within one (1) working day, furnish to the party requesting such information, in writing when requested, a list of each operator having filed a notice pursuant to subsection (a) and all other information regarding each such operator that has been filed with the Register of Deeds in accordance with subsection (a). When submitted in writing by the Register of Deeds, the information shall also include the name of the requesting party and the date and time the Register of Deeds received the request from the requesting party.

(e) After March 27, 1978, operators shall maintain records and drawings of all changes and additions to its underground facilities.

65-31-106. Notice of Intent to Excavate or Demolish

(a) Except as provided in §65-31-109, before beginning any excavation or demolition operation described in "§ 65-31-104 other than an impending emergency as defined in § 65-31-102" each person responsible for such excavation or demolition shall serve written, telephonic or electronic mail (e-mail) ~~written or telephonic~~ notice of intent to excavate or demolish at least three (3) working days prior to the actual date of

excavation or demolition, but not more than ten (10) full working days prior to such time, unless a different period is provided by written agreement between the excavator and the operator. Should a period of time of fifteen (15) calendar days from the actual date specified to start excavation or demolition expire without the excavation or demolition being completed, then the person responsible for such excavation or demolition shall serve an additional written, telephonic or electronic mail (e-mail) ~~written or telephonic~~ notice of intent to excavate or demolish at least three (3) working days prior to the expiration of time on the fifteen (15) calendar days.

(1) If the proposed area of excavation or demolition is not served by the one call service as provided for in § 65-31-107 the notice required by subsection (a) shall be served on each operator who has filed a list required by §65-31-105 indicating that it has underground utilities located in the county where the excavation or demolition is to occur; or

(2) If the proposed area of excavation or demolition is served by the one-call service as provided for in § 65-31-107, the notice required by subsection (a) shall be served on such one-call service. Provided, where demolition of a building is proposed, each affected operator shall be given reasonable time to remove or protect its utilities before demolition of the building begins.

(b) The written, telephonic or electronic mail (e-mail) ~~written or telephonic~~ notice required by subsection (a) shall contain the name, address and telephone number and email address ~~telephone number~~ of the person filing the notice of intent and, if different, the person responsible for the excavation or demolition, the starting date, the anticipated duration of the excavation or demolition, the type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition and whether or not explosives are anticipated to be used. The location of the proposed excavation or demolition shall ~~should~~ be designated by the person responsible for the excavation or demolition by marking such area with "safety white" color-coded stakes or ~~other marking devices~~. white paint unless:

(1) The operator or its agent can determine the precise location of the proposed area of excavation based solely on the street address from a one-call service locate ticket because of the size of the property;

(2) The operator or its agent can determine the precise location of the proposed area of excavation from a one-call service locate ticket which references a driveway or other easily identifiable point on the property and which identifies the property by street address or block and lot number;

(3) The operator or its agent can determine the precise location of the proposed area of excavation from a one-call service locate ticket which identified the property as being located on a street or road between two designated intersections of such street or road and two cross streets or roads when a street address or block and lot number is unavailable or does not apply; or

(4) The person responsible for the excavation or demolition and all operators with underground facilities in the proposed area of excavation have had a meeting prior to the beginning of the excavation or demolition for the exchange of information on the location of the proposed excavation or demolition.

(c) If the notification required by this section is made by telephone or electronic mail (email), ~~by telephone~~, an adequate record of such notification shall be maintained by each notified operator or one-call service to document compliance with the requirements of this chapter, and a copy of this record shall be furnished by any operator or one-call service to the person giving notice of intent to excavate or demolish when so requested by that person.

(d) Except as provided in §65-31-109, before beginning any excavation or demolition within one hundred feet (100') of the edge of the pavement of a street or highway when such area which lies outside a street, highway, public space or a private easement of an operator, an excavator shall serve notice of such excavation or demolition at least three (3) working days before the actual date of excavation or demolition as set forth in this section. If after receiving proper notification as required in this section, an operator fails to locate its facilities within three (3) working days in the manner required by §65-31-108, the excavator shall be authorized to proceed with the excavation. If an operator fails to locate its facilities within three (3) working days in the manner required by §65-31-108 after receiving proper notification as required by this section and an underground facility of such operator is damaged by an excavator as a result of the operator's failure to discharge such duty, then such excavator shall not be liable for such damage; provided that if the excavator observes clear evidence of the presence of an unmarked utility in the area of the proposed excavation, the excavator shall exercise reasonable care to avoid damage to the utility which may be caused by such excavation, and the excavator shall be liable for damages arising from its failure to use reasonable care in such circumstances.

65-31-107. Operator Associations for Mutual Receipt of Notifications.

(a) Operators may form and operate a one-call service providing for mutual receipt of §65-31-106, notifications of excavation or demolition operations in a defined geographical area. ~~A one-call service that provides such service on behalf of operators having underground utilities within Tennessee shall file with the Register of Deeds of the county in which those utilities are located, the telephone number and address of the one-call service, a description of the geographical area served by the one-call service and a list of the names and addresses of each operator receiving such service from the one-call service.~~ *Any operator that suffers damage as a result of not participating in a one call service providing for receipt of the notification of excavation or demolition operations in a defined geographic area, pursuant to section 65-31-106, waives the right to recover damages to their underground facilities from the excavator, provided the provisions of this act were met by the excavator.*

(b) Natural gas distribution systems are required to belong to a one-call service formed in a geographical area in which such gas distribution systems operate.

(c) Only one one-call service shall be formed and operated within a defined geographical area.

65-31-108. Response to Notice of Intent to Excavate or Demolish.

(a) Each operator notified in accordance with §65-31-106 shall stake or otherwise mark, prior to the noticed time of the proposed excavation or demolition, the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition. The operator shall not be required to indicate the depth of any such utility, but only the approximate ground location under which the utility is located. Such staking or other marking shall utilize the following color code: **In the event more than one operator uses the same color code under this subsection, each operator using the same color shall include a distinctive marking, such as the initials of the operator's name or other marking, which appropriately identifies each operator and sufficiently distinguishes each operator's marking from any other operator authorized to use the same color under this subsection.**

Safety Red shall be used to mark electric power distribution and transmission facilities;

High Visibility Safety Yellow shall be used to mark gas and oil distribution and transmission facilities.

Safety Alert Orange shall be used to mark telephone, telegraph, cable television, video and other telecommunications facilities.

Safety Precaution Blue Shall be used to mark water systems facilities, and

Safety Green shall be used to mark sewer systems facilities.

Safety Purple *shall be used to mark reclaimed water.*

(b) Each operator participating in a one-call service which has been notified in accordance with § 65-31-106 shall notify the one-call service that the operator has marked the approximate location of all of its underground utilities as required by this section or that the operator has no underground utilities in the proposed area of excavation. The operator shall provide this notice to the one-call service in accordance with procedures adopted by the one-call service for this notification. This notice shall fulfill the operator's obligation set forth in subsection (e). When each operator notified in accordance with § 65-31-106 has notified the one-call service that its underground utilities in the proposed area of excavation have been marked or that the operator has no underground utilities in the proposed area of excavation, the person responsible for the

excavation or demolition may immediately proceed with the excavation or demolition notwithstanding the minimum three (3) working day notice requirement before excavation or demolition can begin set forth in § 65-31-106(a).

(c) An excavator shall exercise reasonable care to avoid damage caused by an excavation or demolition within the safety zone around the marked location of the underground utilities. For the purpose of this section, "safety zone" means a strip of land at least four feet (4') wide, but not wider than the width of the utility plus two feet (2') on either side of the utility.

(d) If, upon arrival of the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until an additional notice is made to the one-call. The excavator may then proceed, exercising reasonable care to avoid damage to the utility, which may be caused by such excavation or demolition.

(e) If no facilities exist in the tract or parcel of land, the operators shall make a reasonable effort to so advise the individual who initiated the request, provided the request is received in accordance with § 65-31-106.

(f) The approximate location of underground utilities does not include a designation of location as to depth below the surface at the ground. Excavators must use reasonable care to ascertain for themselves the exact depth of the underground utilities below the surface of the ground. If, after so ascertaining, the excavator learns that its excavation or demolition is likely to interfere with the operation of the underground utility facilities, it must again notify the affected operator of such underground utility facilities and reasonably cooperate with the operator of the underground utility facilities to conduct its excavation or demolition in such a way that the operations of the underground utility facilities are placed out of the way of the proposed excavation or demolition.

(g) Each operator notified in accordance with § 65-31-109, shall stake or otherwise mark, utilizing the color code set forth in § 65-31-108(a), within two (2) hours the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition.

(h) Each operator notified of an impending emergency (as defined in 65-31-102), shall stake or otherwise mark, prior to the noticed time of the proposed excavation or demolition, utilizing the color code set forth in § 65-31-108(a), the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition.

65-31-109. Emergency Excavation or Demolition.

Compliance with the notice requirements of §65-31-106 is not required of any person responsible for emergency excavation or demolition, for repair or restoration of service or to ameliorate an imminent danger to life, health or property, provided, however, that such person gives, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area (or to a one-call service provided for in §65-31-107, that serves an operator) where such excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to the operator's underground utilities. An emergency is defined as an imminent danger to life, health or property whenever there is a substantial likelihood that loss of life, health or property will result before the procedures under §65-31-106 and §65-31-108 can be fully complied with.

(a) Any excavator providing a misrepresentation of an emergency excavation as stated in § 65-31-109(a) or an impending emergency as defined in § 65-31-102 may be subject to the penalties stated in § 65-31-112.

65-31-110. Precautions to Avoid Damage.

In addition to the notification requirements of §65-31-106, each person responsible for any excavation or demolition operation designated in §65-31-104 shall:

(1) Plan the excavation or demolition to avoid damage to and minimize interference with underground utilities in an near the construction area;

(2) Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment in accordance with §65-31-108(b) and (d), taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such utility;

(3) Provide such support and protection for underground utilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such utilities; and

(4) Each utility, regardless of the use or material, shall be installed with sufficient clearance to permit the maintenance of existing utilities, and to protect against damage to existing utilities.

65-31-111. Notice of Excavation or Demolition Damage.

(a) Except as provided by subsection (b) of this section, each person responsible for any excavation or demolition operation designated in §65-31-104 that results in damage to an underground utility shall, immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

- (b) Each person responsible for any excavation or demolition operation described in §65-31-104 that results in any damage to an underground utility permitting the escape of any flammable, toxic or corrosive gas or liquid, shall immediately upon discovery of such damage, notify the operator, police and fire departments and take any other action as may be reasonably necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.
- (c) During initial excavation, if an underground utility is found to be unsound due to deterioration, the person responsible for excavation shall immediately notify the utility company involved and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.
- (d) The financial impact of all damages to underground utilities shall be calculated using generally accepted accounting principles (GAAP).

65-31-112. ~~Civil~~ Criminal Penalties and Remedies.

(a) Any Person who violates any provision of this chapter is guilty of a Class A misdemeanor And is subject to a fine not to exceed two thousand five hundred dollars (\$2,500) and/or a term of imprisonment not to exceed forty-eight (48) hours or both.

(1) Any excavator who violates the provisions of this chapter may be issued a citation by any local or state law enforcement officer or permitting agency inspector and the issuer of a citation may require any excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this act.

- 1. If, after receiving proper notification as required in section 65-31-106 an operator fails to locate their facilities as required in section 65-31-108, an underground facility of such operator is damaged by an excavator who has complied with the provisions of this act: and such damage is a proximate result of the operator's failure to discharge such duty, then such excavator shall not be liable for such damage.*

(b) Any person who violates any provision of this chapter may be required to appear before the appropriate court as set forth in Tennessee Code Annotated 40-1-107. Any person who fails to appear or otherwise properly respond to a citation issued pursuant to this Section shall, in addition to the penalties as set forth in the citation, be charged with a misdemeanor offense and, upon conviction, shall be guilty of a Class B misdemeanor punishable as provided in 40-35-111.

(1) Any person cited for a violation of this chapter, unless required to appear before the appropriate court may:

(A) Post a bond, which shall be equal in the amount to the applicable penalty; or

(B) Sign and accept a citation promising to appear before the appropriate court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable penalty.

(2) Any person charged with a violation of this chapter, unless required to appear before the appropriate court, may;

(A) Pay the penalty, in lieu of appearance, either by mail or in person, within (ten)10 days after the date of receiving the citation; or

(B) Forfeit bond, if a bond is posted, by not appearing at the designated time and location.

(C) Any person who knowingly and willfully removes or otherwise destroys the stakes or other physical markings used to mark the horizontal route of an underground facility commits the offense of vandalism as set forth in Tennessee Code Annotated, Section 39-14-408, and shall be subject to the punishment for vandalism as set forth in Section 39-14-105.

If the person cited follows either of the above procedures, he shall be deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission may be used as evidence in any other proceeding.

65-31-113. Severability.

If any provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

This act shall take effect on July 1, 1999. The public welfare requiring it.

The changes in the act shall take effect upon July 1, 2006.