

**UNDERGROUND UTILITIES FACILITIES AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: John P. Holmgren**

AN ACT RELATING TO DAMAGE TO UNDERGROUND UTILITY FACILITIES; MAKING AN EXCAVATOR RESPONSIBLE FOR THE COSTS OF MARKING UNDERGROUND FACILITIES IN CERTAIN CASES; PROVIDING FOR AN EXCAVATION PLAN TO GUIDE EXCAVATION IN LIEU OF THE MARKING OF UNDERGROUND FACILITIES; EXPANDING THE REQUIREMENTS AN EXCAVATOR MUST COMPLY WITH TO AVOID LIABILITY FOR DAMAGE TO AN UNDERGROUND FACILITY; AND REQUIRING THE BOOKS OF AN ASSOCIATION FOR RECEIPT OF NOTICE OF EXCAVATION ACTIVITIES TO BE OPEN TO ITS MEMBERS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**54-8a-2**, as last amended by Chapter 203, Laws of Utah 1996

**54-8a-4**, as last amended by Chapter 203, Laws of Utah 1996

**54-8a-5**, as last amended by Chapter 203, Laws of Utah 1996

**54-8a-6**, as last amended by Chapter 203, Laws of Utah 1996

**54-8a-7**, as last amended by Chapter 87, Laws of Utah 1993

ENACTS:

**54-8a-9.5**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **54-8a-2** is amended to read:

**54-8a-2. Definitions.**

As used in this chapter:

(1) "Association" means two or more operators organized to receive notification of excavation activities in a specified area, as provided by Section 54-8a-9.

(2) "Emergency" means an occurrence necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

(3) "Excavate" or "excavation" means an operation in which earth, rock, or other material on or below the ground is moved or displaced by tools, equipment, or explosives.

(4) "Excavator" means any person or entity that excavates or conducts excavation activities.

~~[(4)]~~ (5) "48 hours" means a 48-hour period occurring during business days which includes any day except Saturday, Sunday, or a legal holiday.

(6) "Location request assignment" means a number assigned to a proposed excavation by an association or operator upon receiving notice of the proposed excavation from the excavator.

~~[(5)]~~ (7) (a) "Operator" means a person or entity which owns, operates, or maintains underground facilities.

(b) "Operator" does not include an owner of real property where underground facilities are:

- (i) located solely within the property;
- (ii) used exclusively to furnish services on the property; and
- (iii) maintained under the operation and control of that owner.

~~[(6)]~~ (8) "Person" includes individuals, government entities, corporations, partnerships, associations, and companies and their trustees, receivers, assignees, and personal representatives.

~~[(7)]~~ (9) "Underground facility" means personal property that is buried or placed below ground level for use in the storage or conveyance of any of the following:

- (a) water;
- (b) sewage;
- (c) communications, including electronic, photonic, telephonic, or telegraphic communications;
- (d) television, cable television, or other telecommunication signals, including transmission to subscribers of video or other programming;
- (e) electric power;
- (f) oil, gas, or other fluid and gaseous substances;
- (g) steam;
- (h) slurry; or
- (i) dangerous materials or products.

Section 2. Section **54-8a-4** is amended to read:

**54-8a-4. Notice of excavation.**

(1) (a) Before excavating, an excavator must notify each operator with underground facilities in the area of the proposed excavation.

(b) The requirements of Subsection (1)(a) do not apply:

- (i) if there is an emergency;
- (ii) while gardening; or
- (iii) while tilling private ground.

(2) Notice must:

- (a) be given by telephone, in person, or by other means acceptable to each operator;
- (b) be given not less than 48 hours nor more than seven days before the commencement of excavation; and

(c) include the proposed excavation's anticipated location, dimensions, and duration.

(3) If the proposed excavation's anticipated location and dimensions cannot be described as required under Subsection (2)(c), an excavator must mark the proposed excavation site in white.

(4) If there is an association in the county, notice to that association constitutes notice to each operator in the county.

(5) If an excavation on a single project lasts more than 14 days, the excavator must give notice at least once each additional 14-day period.

(6) If markings made by the operator have been disturbed so that they no longer identify the underground facilities:

- (a) an excavator shall notify the association or each operator before excavating the site; and
- (b) the operator shall mark the area again within 48 hours of the renotification.

(7) An excavator may begin excavation if:

(a) all underground facilities have been located and marked or the operators have indicated that there are no underground facilities within the proposed excavation site;

(b) 48 hours have elapsed from the time of initial notice and the excavator has not received a request for a meeting under Subsection 54-8a-5(2); or

(c) 48 hours have elapsed from the time of renotification under Subsection (6).

(8) Unless an operator remarks an area pursuant to Subsection (6), the excavator shall be responsible for the costs incurred by an operator to remark its underground facilities following the second or subsequent notice given by an excavator for a proposed excavation designated by the same location request assignment.

Section 3. Section **54-8a-5** is amended to read:

**54-8a-5. Marking of underground facilities.**

(1) (a) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall:

(i) mark the location of its underground facilities in the area of the proposed excavation; or

(ii) notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation.

(b) The underground facilities shall be marked with stakes, paint, or in some other customary way, indicating, at the option of the operator, either:

(i) the approximate centerline of the underground facility; or

(ii) the approximate outside dimensions of both sides of the underground facility.

(2) (a) The operator is not required to mark the underground facilities within 48 hours if:

(i) the proposed excavation:

[(i)] (A) is not clearly described by a street address or description and is not marked as provided in Subsection 54-8a-4(3);

[(ii)] (B) is located in a remote area;

[(iii)] (C) is an extensive excavation; or

[(iv)] (D) presents other constraints that make it unreasonably difficult for the operator to comply with the marking requirements of this section~~[-];~~ or

(ii) the operator is not able to readily locate the underground facilities from the surface with standard underground detection devices.

(b) If the operator cannot proceed with the marking because of a situation described in Subsection (2)(a), the operator shall contact the excavator within 48 hours and request a meeting at

the proposed excavation site or some other mutually agreed upon location.

(c) For the situations described under Subsections (2)(a)(i)(A) and (2)(a)(ii)(B), the meeting will constitute the beginning of a new 48-hour period within which the operator must mark the underground facilities.

(d) For the situations described under Subsections (2)(a)(iii)(C) and (2)(a)(iv)(D), the meeting will constitute the beginning of a new 48-hour period within which the operator must begin marking the underground facilities.

(e) For the situation described under Subsection (2)(a)(ii), the excavator and operator shall agree on a plan of excavation designed to prevent damage to the operator's underground facilities. Notwithstanding the agreement, the excavator shall proceed in a manner that is reasonably calculated to avoid damage to the underground facilities.

(3) The markings required by this section shall conform to the following color code for each type of installation:

- (a) safety red - electric power;
- (b) safety yellow - gas, oil, a dangerous material or product, or steam;
- (c) safety orange - communications or cable television;
- (d) safety blue - water or slurry; and
- (e) safety green - sewer.

(4) Each marking is valid for not more than [16] 14 calendar days from the date notice is given.

(5) If multiple lines exist:

- (a) the markings must indicate the number of lines; or
- (b) all lines must be marked.

Section 4. Section **54-8a-6** is amended to read:

**54-8a-6. Duties and liabilities of the person who excavates.**

(1) Damage to an underground facility by an excavator who excavates but fails to comply with Section 54-8a-4, is prima facie evidence that the excavator is liable for any damage caused by the negligence of that excavator.

(2) (a) An excavator is not liable for damage to an underground facility if he or she has:

- (i) given proper notice of the proposed excavation as required in this chapter;
- (ii) marked the area of the proposed excavation as required in Section 54-8a-4; [and]
- (iii) complied with Section 54-8a-5.5[-]; and
- (iv) complied with Section 54-8a-7.

(b) An excavator is not liable for damage to an underground facility if an operator has failed to comply with Section 54-8a-5 or 54-8a-9.

Section 5. Section **54-8a-7** is amended to read:

**54-8a-7. Notice of damage -- Repairs.**

(1) If an excavator contacts or damages an underground facility, [~~he~~] the excavator shall immediately notify the appropriate operator and proceed in a manner that is reasonably calculated to avoid further damage to the underground facility.

(2) Upon receipt of notice, the operator shall immediately examine the underground facility, and, if necessary, make repairs.

Section 6. Section **54-8a-9.5** is enacted to read:

**54-8a-9.5. Inspection of records.**

The books and records of an association shall be open to inspection by its members during normal business hours upon 48 hours advance notice.