

**DAMAGE TO UNDERGROUND UTILITY FACILITIES**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Bill Wright**

**This act modifies the Public Utilities Code to address requirements when excavating. The act addresses notification requirements. The act addresses how an excavator shall respond if it contacts or damages underground facilities. This act addresses attorneys' fees. This act provides for alternative dispute resolution.**

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

AMENDS:

**54-8a-4**, as last amended by Chapter 198, Laws of Utah 1998

**54-8a-7**, as last amended by Chapter 198, Laws of Utah 1998

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

ENACTS:

**54-8a-8.5**, Utah Code Annotated 1953

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

Section 1. Section **54-8a-4** is amended to read:

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

(1) (a) Before excavating, an excavator [~~must~~] shall 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~~] The notice required by Subsection (1) shall:

(a) be given:

- (i) by telephone[;];
- (ii) in person[;]; or
- (iii) by other means acceptable to each operator;

(b) be given not:

(i) less than 48 hours [~~nor more than seven days~~] before [~~the commencement of~~] excavation begins; [~~and~~] or

(ii) more than seven days before excavation begins; and

(c) include the proposed excavation's anticipated:

(i) location[;];

(ii) dimensions[;];

(iii) type; and

(iv) duration.

(3) If the proposed excavation's anticipated location and dimensions cannot be described as required under Subsection (2)(c), an excavator [~~must~~] shall 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~~] shall give notice at least once each additional 14-day period.

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

(a) before excavating the site an excavator shall notify:

(i) the association; or

(ii) 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) (i) all underground facilities have been;

(A) located; and

(B) marked; or

(ii) the operators have indicated that there are no underground facilities within the proposed excavation site;

- (b) (i) 48 hours have elapsed from the time of initial notice; and
- (ii) the excavator has not:
  - (A) been notified by the operator; or
  - (B) 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 2. 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, the excavator shall immediately notify the appropriate operator and then 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 3. Section **54-8a-8** is amended to read:

**54-8a-8. Civil penalty for damage -- Action by excavator, operator, or county attorney -- Exceptions -- Remedies supplemental.**

(1) (a) An excavator or operator who negligently violates [~~any of the provisions of~~] this chapter is subject to a civil penalty in the amount of \$500 for each violation, not to exceed \$5,000 total penalty.

(b) An excavator or operator who knowingly and willfully violates any of the provisions of this chapter is subject to a civil penalty in an amount of \$1,000 for each violation, not to exceed \$25,000 total penalty.

- (2) (a) Actions to recover the civil penalties under this section shall be brought [~~either~~] by:
- (i) the excavator[;];
  - (ii) the operator whose underground facilities are damaged[;]; or [by]

(iii) the county attorney of the county in which the damage occurs.

(b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney's fees as determined by the court.

~~[(b)]~~ (c) All penalties recovered from the action shall be paid into the General Fund.

(3) Subsection (1) does not apply to an excavation made:

(a) during an emergency, if reasonable precautions are taken to protect underground facilities;

(b) in agricultural operations;

(c) for the purpose of finding or extracting natural resources; or

(d) with hand tools on property owned or occupied by the excavator.

(4) (a) The civil penalties in this section are in addition to any damages that an operator or an excavator may seek to recover.

(b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney's fees as determined by the court.

Section 4. Section **54-8a-8.5** is enacted to read:

**54-8a-8.5. Alternative dispute resolution.**

(1) An association formed under Section 54-8a-9 shall make available an alternative dispute resolution program to resolve disputes arising from damage to underground facilities between:

(a) an operator;

(b) an owner;

(c) an excavator; or

(d) other interested party.

(2) The alternative dispute program created under this section is in addition to the ability of a party to bring a civil action under Section 54-8a-8.

(3) The alternative dispute resolution program shall:

(a) include mediation and arbitration;

(b) require that one or more appointed mediators or arbitrators decide:

(i) the issue of liability for any reimbursement; and

(ii) the amount of reimbursement; and

(c) shall be consistent with Title 78, Chapter 31a, Utah Arbitration Act.

(4) Nothing in this section shall be construed to change the basis for civil liability for damages.