

**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 the excavators 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;



- 28 (i) by telephone[;];
- 29 (ii) in person[;]; or
- 30 (iii) by other means acceptable to each operator;
- 31 (b) be given not:
- 32 (i) less than 48 hours [~~nor more than seven days~~] before [~~the commencement of~~
- 33 excavation begins; [~~and~~] or
- 34 (ii) more than seven days before excavation begins; and
- 35 (c) include the proposed excavation's anticipated:
- 36 (i) location[;];
- 37 (ii) dimensions[;];
- 38 (iii) type; and
- 39 (iv) duration.

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

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

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

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

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

- 50 (i) the association; or
- 51 (ii) each operator [~~before excavating the site~~]; and

52 (b) the operator shall mark the area again within 48 hours of the renotification.

53 (7) An excavator may begin excavation if:

- 54 (a) (i) all underground facilities have been:
  - 55 (A) located; and
  - 56 (B) marked; or
- 57 (ii) the operators have indicated that there are no underground facilities within the  
58 proposed excavation site;

- 59 (b) (i) 48 hours have elapsed from the time of initial notice; and
- 60 (ii) the excavator has not;
- 61 (A) been notified by the operator; or
- 62 (B) received a request for a meeting under Subsection 54-8a-5(2); or
- 63 (c) 48 hours have elapsed from the time of renotification under Subsection (6).
- 64 (8) Unless an operator remarks an area pursuant to Subsection (6), the excavator shall be
- 65 responsible for the costs incurred by an operator to remark its underground facilities following the
- 66 second or subsequent notice given by an excavator for a proposed excavation designated by the
- 67 same location request assignment.

68 Section 2. Section **54-8a-7** is amended to read:

69 **54-8a-7. Notice of damage -- Repairs.**

70 (1) If an excavator contacts or damages an underground facility, the excavator shall  
71 immediately;

72 (a) cease all excavation; and

73 (b) notify the appropriate operator [~~and proceed in a manner that is reasonably calculated~~  
74 to avoid further damage to the underground facility].

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

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

78 **54-8a-8. Civil penalty for damage -- Action by excavator, operator, or county**  
79 **attorney -- Exceptions -- Remedies supplemental.**

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

83 (b) An excavator or operator who knowingly and willfully violates any of the provisions  
84 of this chapter is subject to a civil penalty in an amount of \$1,000 for each violation, not to exceed  
85 \$25,000 total penalty.

86 (2) (a) Actions to recover the civil penalties under this section shall be brought [~~either~~] by:

87 (i) the excavator[;];

88 (ii) the operator whose underground facilities are damaged[;]; or [by]

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

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

92 ~~[(b)]~~ (c) All penalties recovered from the action shall be paid ~~[into the General Fund]~~ to  
93 the person who is harmed because of the violation of this chapter.

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

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

97 (b) in agricultural operations;

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

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

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

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

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

105 **54-8a-8.5. Alternative dispute resolution.**

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

108 (a) an operator;

109 (b) an owner;

110 (c) an excavator; or

111 (d) other interested party.

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

114 (3) The alternative dispute resolution program shall:

115 (a) include mediation and arbitration;

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

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

118 (ii) the amount of reimbursement; and

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

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

121 damages.

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**Legislative Review Note**  
**as of 2-16-01 9:18 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**