

CHAPTER NO. 73

SENATE BILL NO. 1450

By Atchley

Substituted for: House Bill No. 1099

By Head

AN ACT To amend Tennessee Code Annotated, Title 65, Chapter 31, relative to underground utility damage prevention.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-31-102, is amended by inserting the following language as new, appropriately designated subdivisions:

() "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.

() "Impending emergency" means circumstances potentially dangerous to life, health, property, the 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.

SECTION 2.

(a) Tennessee Code Annotated, Section 65-31-106(a), is amended by deleting the figures and symbols "65-31-104", and by substituting instead the following:

65-31-104, other than an impending emergency as defined in Section 65-31-102,

(b) Tennessee Code Annotated, Section 65-31-106(a), is amended by deleting from the second sentence the words, figures and symbols "ten (10) working days" and by substituting instead the words, figures and symbols "fifteen (15) calendar days".

(c) Tennessee Code Annotated, Section 65-31-106(a), is amended to delete from the second sentence the words, figures and symbols "tenth (10th) working day" and by substituting instead the words, figures and symbols "fifteenth (15th) calendar day".

(d) Tennessee Code Annotated, Section 65-31-106(a)(1), is amended by deleting the words "The notice required" and substituting the following at the beginning of the sentence:

If the proposed area of excavation or demolition is not served by the one call service as provided in Section 65-31-107, then the notice required

(e) Tennessee Code Annotated, Section 65-31-106(a)(2), is amended by deleting subsection (2) in its entirety and substituting the following language:

(2) If the proposed area of excavation or demolition is served by the one-call service, as provided for in Section 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.

SECTION 3.

(a) Tennessee Code Annotated, Section 65-31-107(a), is amended by adding the following to the end of the subsection:

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 utilities from the excavator, provided the provisions of this act were met by the excavator.

(b) Tennessee Code Annotated, Section 65-31-107(b), is amended by deleting subdivision (3) in its entirety.

SECTION 4.

(a) Tennessee Code Annotated, Section 65-31-108(a), is amended by adding the following language as a new subdivision (6):

(6) SAFETY PURPLE shall be used to mark reclaimed water.

(b) Tennessee Code Annotated, Section 65-31-108, is amended by inserting the following language as a new, appropriately designated subsection immediately following subsection (b) and by redesignating subsequent subsections accordingly:

() If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility 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.

(c) Tennessee Code Annotated, Section 65-31-108, is amended by adding the following language as new, appropriately designated subsections:

() Each operator notified in accordance with Section 65-31-109, shall within two (2) hours stake or otherwise mark, utilizing the color code set forth in Section 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.

() Each operator notified of an impending emergency, as defined in Section 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 Section 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.

SECTION 5. Tennessee Code Annotated, Section 65-31-109, is amended by adding the following language as a new, appropriately designated subsection:

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

SECTION 6. Tennessee Code Annotated, Section 65-31-112, is amended by deleting the section in its entirety and by substituting instead the following:

(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) 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.

(2) 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, Section 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 Section 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 shall 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 the bond, if a bond is posted, by not appearing at the designated time and location.

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.

(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.

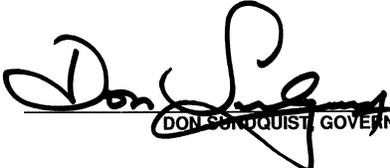
SECTION 7. This act shall take effect on July 1, 1999, the public welfare requiring it.

PASSED: March 24, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 7th day of April 1999


DON S. QUIGLEY, GOVERNOR