
By: **Senator Colburn**
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Assigned to: Finance

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Senate action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 **Public Utilities - Underground Facilities - Liability for Excavation or**
3 **Demolition Damages**

4 FOR the purpose of limiting the liability of a person who damages certain
5 underground facilities due to excavation or demolition under certain
6 circumstances; providing that an owner of certain underground facilities is
7 liable for certain damages due to excavation or demolition under certain
8 circumstances; defining a certain term; providing for the application of this Act;
9 and generally relating to liability for certain damages due to excavation or
10 demolition.

11 BY repealing and reenacting, with amendments,
12 Article - Public Utility Companies
13 Section 12-101
14 Annotated Code of Maryland
15 (1998 Volume and 1999 Supplement)
16 (As enacted by Chapter 650 of the Acts of the General Assembly of 1999)

17 BY repealing and reenacting, with amendments,
18 Article - Public Utility Companies
19 Section 12-104
20 Annotated Code of Maryland
21 (1998 Volume and 1999 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article - Public Utility Companies

1 Section 12-109
2 Annotated Code of Maryland
3 (1998 Volume and 1999 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Public Utility Companies**

7 12-101.

8 (a) In this subtitle the following words have the meanings indicated.

9 (b) (1) "Contractor" means a person that performs excavations or
10 demolitions.

11 (2) "Contractor" includes a person that performs excavations or
12 demolitions under a contract or subcontract.

13 (c) "Demolition" means an operation in which a structure or mass of material
14 is wrecked, razed, rended, moved, or removed using any tool, equipment, or explosive.

15 (d) (1) "Excavation" means an operation in which earth, rock, or other
16 material in or on the ground is moved, removed, or otherwise displaced by using any
17 tool, equipment, or explosive.

18 (2) "Excavation" includes grading, trenching, digging, ditching, drilling,
19 augering, tunnelling, scraping, cable or pipe plowing and driving a mass of material.

20 (e) "One-call system" means a communications network in the State that
21 allows a person to telephone a one-number utility protection system.

22 (f) (1) "Owner" means a person that:

23 (i) owns or operates an underground facility; and

24 (ii) has the right to bury an underground facility.

25 (2) "Owner" includes:

26 (i) a public utility;

27 (ii) a telecommunications corporation;

28 (iii) a cable television corporation;

29 (iv) a political subdivision;

30 (v) a municipal corporation;

31 (vi) a steam heating company; and

1 (vii) an authority.

2 (g) "OWNER-MEMBER" MEANS AN OWNER THAT PARTICIPATES AS A MEMBER
3 IN A ONE-CALL SYSTEM.

4 (H) (1) "Person" has the meaning stated in § 1-101 of this article.

5 (2) "Person" includes:

6 (i) a municipal corporation; and

7 (ii) a governmental unit, department, or agency.

8 [(h)] (I) (1) "Underground facility" means personal property that is to be
9 buried or submerged for:

10 (i) use in connection with the storage or conveyance of water,
11 sewage, oil, gas, or other substances; or

12 (ii) transmission or conveyance of electronic, telephonic, or
13 telegraphic communications or electricity.

14 (2) "Underground facility" includes pipes, sewers, conduits, cables,
15 valves, lines, wires, manholes, attachments, and those portions of poles below ground.

16 (3) "Underground facility" does not include a stormwater drain.

17 12-104.

18 (a) [A] EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION,
19 A person that obtains the information required under this subtitle is not excused
20 from:

21 (1) performing an excavation or demolition in a careful and prudent
22 manner; and

23 (2) liability for damages or injury that results from the excavation or
24 demolition.

25 (b) If an underground facility is damaged by a person that fails to comply with
26 this subtitle, the person is deemed negligent and is liable to the owner for the total
27 cost of repair of the underground facility, UNLESS THE OWNER HAS FAILED TO
28 BECOME AN OWNER-MEMBER IN ACCORDANCE WITH § 12-109 (B) OF THIS SUBTITLE.

29 (C) IF AN UNDERGROUND FACILITY IS DAMAGED BY A PERSON WHO IS IN
30 COMPLIANCE WITH THIS SUBTITLE AND THE OWNER HAS FAILED TO COMPLY WITH
31 THIS SUBTITLE:

32 (1) THE PERSON IS NOT LIABLE TO THE OWNER FOR THE COST OF
33 REPAIR OF THE UNDERGROUND FACILITY; AND

1 (2) THE OWNER IS LIABLE FOR ANY REPAIRS OR RESTORATION OF
2 PROPERTY DAMAGED BY THE EXCAVATION OR DEMOLITION.

3 12-109.

4 (a) Each owner shall file notice with and submit to the Commission in writing
5 the telephone number of the person in each county to which calls concerning proposed
6 excavations or demolitions are to be directed.

7 (b) Each owner shall be a member of a one-call system that has filed a
8 telephone number with the Commission on behalf of all owner-members.

9 (c) Excluding Saturdays, Sundays, and legal holidays, within 48 hours after
10 receiving notice from a person under § 12-108 of this subtitle, an owner shall
11 determine if a proposed excavation or demolition:

12 (1) is within 5 feet of the horizontal plane of an underground facility; or

13 (2) because of planned blasting, is in such proximity to an underground
14 facility that the underground facility may be damaged or disturbed.

15 (d) Excluding Saturdays, Sundays, and legal holidays, within 48 hours after
16 receiving the person's notice under § 12-108 of this subtitle, an owner that
17 determines under subsection (c) of this section that an underground facility may be
18 damaged or disturbed shall notify the person of the determination.

19 (e) An owner that elects to perform a proposed excavation or demolition shall
20 perform the excavation or demolition around the underground facility in a timely
21 manner.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed only prospectively and may not be applied or interpreted to have any effect
24 on or application to any cause of action for damages to an underground facility arising
25 before the effective date of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2000.