
By: **Senator Colburn**
Introduced and read first time: February 2, 2001
Assigned to: Finance

A BILL ENTITLED

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; providing for the construction of certain provisions of this Act;
9 defining a certain term; providing for the prospective application of this Act; and
10 generally relating to liability for certain damages due to excavation or
11 demolition.

12 BY repealing and reenacting, with amendments,
13 Article - Public Utility Companies
14 Section 12-101 and 12-104
15 Annotated Code of Maryland
16 (1998 Volume and 2000 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - Public Utility Companies
19 Section 12-109
20 Annotated Code of Maryland
21 (1998 Volume and 2000 Supplement)

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

24 **Article - Public Utility Companies**

25 12-101.

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

27 (b) (1) "Contractor" means a person that performs excavations or
28 demolitions.

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

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

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

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

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

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

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

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

15 (2) "Owner" includes:

16 (i) a public utility;

17 (ii) a telecommunications corporation;

18 (iii) a cable television corporation;

19 (iv) a political subdivision;

20 (v) a municipal corporation;

21 (vi) a steam heating company; and

22 (vii) an authority.

23 (G) "OWNER-MEMBER" MEANS AN OWNER THAT PARTICIPATES AS A MEMBER
24 IN A ONE-CALL SYSTEM.

25 [(g)] (H) (1) "Person" has the meaning stated in § 1-101 of this article.

26 (2) "Person" includes:

27 (i) a municipal corporation; and

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

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

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

3 (ii) transmission or conveyance of electronic, telephonic, or
4 telegraphic communications or electricity.

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

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

8 12-104.

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

12 (1) performing an excavation or demolition in a careful and prudent
13 manner; and

14 (2) liability for damages or injury that results from the excavation or
15 demolition.

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

20 (C) IF AN UNDERGROUND FACILITY IS DAMAGED BY A PERSON WHO IS IN
21 COMPLIANCE WITH THIS SUBTITLE AND THE OWNER HAS FAILED TO BECOME AN
22 OWNER-MEMBER IN ACCORDANCE WITH § 12-109 (B) OF THIS SUBTITLE:

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

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

27 (D) SUBSECTION (C) OF THIS SECTION MAY NOT BE CONSTRUED TO
28 INTERFERE WITH THE RIGHT OF:

29 (1) A THIRD PARTY TO RECOVER DAMAGES ARISING OUT OF THE
30 EXCAVATION OR DEMOLITION FROM THE PERSON OR FROM THE OWNER; OR

31 (2) THE PERSON TO SEEK CONTRIBUTION FROM AN OWNER FOR
32 DAMAGES SOUGHT BY A THIRD PARTY UNDER PARAGRAPH (1) OF THIS SUBSECTION.

1 12-109.

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

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

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

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

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

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

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

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

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2001.