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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 21, 2001

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

1 **Article - Public Utility Companies**

2 12-101.

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

4 (b) (1) "Contractor" means a person that performs excavations or
5 demolitions.

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

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

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

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

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

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

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

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

20 (2) "Owner" includes:

21 (i) a public utility;

22 (ii) a telecommunications corporation;

23 (iii) a cable television corporation;

24 (iv) a political subdivision;

25 (v) a municipal corporation;

26 (vi) a steam heating company; and

27 (vii) an authority.

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

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

1 (2) "Person" includes:

2 (i) a municipal corporation; and

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

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

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

8 (ii) transmission or conveyance of electronic, telephonic, or
9 telegraphic communications or electricity.

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

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

13 12-104.

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

17 (1) performing an excavation or demolition in a careful and prudent
18 manner; and

19 (2) liability for damages or injury that results from the excavation or
20 demolition.

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

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

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

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

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

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

3 (2) THE PERSON TO SEEK CONTRIBUTION FROM AN OWNER FOR
4 DAMAGES SOUGHT BY A THIRD PARTY UNDER PARAGRAPH (1) OF THIS SUBSECTION.
5 12-109.

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

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

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

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

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

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

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

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

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 ~~October~~ June 1, 2001.