

Title 37 PUBLIC UTILITIES AND PUBLIC TRANSPORTATION.

Section 37-15-1

Purpose and intent.

The purpose of this chapter is to safeguard against injury and loss of life due to excavation or demolition and to protect underground facilities from costly damage and the interruption of utility or other services to the general public.

(Acts 1994, No. 94-487, p. 911, §1.)

Section 37-15-2

Definitions.

As used in this chapter the following words have the following meanings:

(1) **APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.** Information about an operator's underground facilities which is provided to a person by an operator and must be accurate to within 18 inches measured horizontally from the outside edge of each side of such operator's facility, or a strip of land 18 inches either side of the operator's field mark or the marked width of the facility plus 18 inches on each side of the marked width of the facility.

(2) **BLASTING.** The use of an explosive device for the excavation of earth, rock, or other material or the demolition of a structure.

(3) **CONTRACT LOCATOR.** Any person contracted with an operator specifically to determine and mark the approximate location of the operator's utility lines that exist within the area specified by a notice served on the "One-Call Notification System."

(4) **DAMAGE.** Includes, but is not limited to, the substantial weakening of structural or lateral support of an underground facility, penetration or destruction of any underground facility's protective coating, housing, or other protective device, and the

severance (partial or complete) of any underground facility, but does not apply to any operator's abandoned underground facility.

(5) DEMOLITION. Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or explosives.

(6) DESIGN OR SURVEY LOCATE REQUEST. Any communication to the "One-Call Notification System" or an in-house program of an operator which meets the operational requirements of receiving those excavation or demolition notifications described in subsection (a) of Section 37-15-5, specifically to request existing underground facilities to be located for bidding, predesign, or advance planning purposes. A design locate request may not be used for excavation purposes and an excavation locate request may not be used for design or survey purposes.

(7) EMERGENCY EXCAVATION OR DEMOLITION. An excavation or demolition that is required to eliminate an imminent danger to life, health, property, or the environment or required for the repair or restoration of operator service that is required to be performed before the notification and response procedures required in Section 37-15-4 and 37-15-6 may be fully utilized.

(8) EXCAVATE or EXCAVATION. Any operation for the purpose of the movement or removal of earth, rock, or other material by mechanized equipment or explosive device and includes, but is not limited to, augering, backfilling, blasting, boring, digging, ditching, drilling, grading, pile-driving, plowing-in, pulling-in, ripping, scraping, sub-soiling, trenching, and tunneling. Excavate or excavation does not include routine roadway maintenance activities carried out by or for those responsible for publicly-maintained roadways, provided that the activities occur entirely within the right-of-way of a public road, street, or highway; are carried out with reasonable care so as to protect any utility facilities placed in the right-of-way by permit; are carried out within the limits of any original excavation on the traveled way, shoulder, or drainage ditches of a public road, street,

or highway; and, if involving the replacement of existing structures, including traffic control devices, replace such structures in their approximate previous locations and at their approximate previous depth. Excavate or excavation does not include routine railroad maintenance activities conducted within the track structure and its adjacent right-of-way, provided the activities are performed by railroad employees or railroad contractors and are carried out with reasonable care so as to protect any underground facilities placed in the railroad right-of-way by agreement with the railroad. Nothing in this chapter shall modify or abrogate any contractual provision entered into between any railroad and any other party owning or operating an underground facility or underground utility lines within the railroad's right-of-way.

(9) EXCAVATOR. Any person who engages in excavation.

(10) IMPLIED EASEMENT. Any unwritten easement or right-of-way on private property required to provide utility or other services by means of underground facilities on property of the owner requesting such service.

(11) MARK or MARKING. The use of stakes, flags, paint, buoys, or clearly identifiable materials placed on the surface of the ground or water to show the approximate location of underground facilities.

(12) MECHANIZED EQUIPMENT. Equipment powered or energized by any motor, engine, hydraulic, or pneumatic device and is used for excavation or demolition work including, but not limited to, tractors, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, pile drivers, drills, cable and pipe plows, or other equipment used for plowing-in or pulling-in cable or pipe.

(13) MEMBER. A person who participates in the "One-Call Notification System" to receive services and is in good standing with the "One-Call Notification System" in accordance with the guidelines set forth in the corporation's bylaws.

(14) NONINVASIVE METHOD OF EXCAVATION. A method of excavation that does not compromise the integrity of the underground facility. These methods include, but are not limited

to, hand digging, pot holing, soft digging, vacuum excavation methods, or other methods approved by the operator.

(15) NOTIFICATION AREA. An area or territory which an operator designates as the area where the operator wishes to receive notifications for any excavation in that area. The notification area should encompass the underground distribution system or network of the operator.

(16) "ONE-CALL NOTIFICATION SYSTEM". A non-profit corporation, a public corporation, or a governmental entity which will provide a statewide notification service, for the purpose of receiving statewide telephonic toll-free or electronic notification of any planned excavation or demolition activities by excavators or other persons as set forth in Section 37-15-4 and distributing the required excavation or demolition information to its affected member operators as set forth in Section 37-15-5.

(17) OPERATOR. Any person, governmental agency, or political subdivision, or its agents, who owns or operates a public or private underground facility which furnishes services, information, or materials, or transports or transmits electric energy, light, water, steam, oil, gases, gas, mixture of gases, petroleum, petroleum products, hazardous or flammable liquids, toxic or corrosive fluids and gases, or items of like nature, and telecommunications, cable television, water, drainage, sewage, or other systems of like nature. The term operator does not apply to any entity listed above if all of the underground facilities owned and operated by the entity are for the sole use of the entity and are located solely on the entity's own property or on property over which the entity has rights of operation.

(18) PERSON. An individual, joint venture, partnership, association, authority, cooperative, firm, corporation, governmental entity, or any subdivision or instrumentality of that entity and its employees, agents, or legal representatives.

(19) ROUTINE ROADWAY MAINTENANCE. Maintenance work on a roadway that is not done pursuant to a contract awarded by a state or local government through a bid process for which plan

drawings have been developed in advance or work for which detailed and specific scheduling is not possible or feasible.

(20) TOLERANCE ZONE. The width of the underground facility plus 18 inches on either side of the outside edge of the underground facility on a horizontal plane.

(21) UNDERGROUND FACILITY. Any cable, pipeline, duct, wire, conduit, or other similar installation, installed underground or underwater, by which an operator transports or delivers materials, information, or services.

(22) WORKING DAY. A 24-hour period commencing from the time of receipt of the notification, excluding Saturday, Sunday, and the following nine holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Friday following Thanksgiving Day, Christmas Eve, and Christmas Day. When any of these holidays occur on a Saturday, it will be observed on the preceding Friday and when any of these holidays occur on a Sunday, it will be observed on the following Monday.

(Acts 1994, No. 94-487, p. 911, §2; Act 2012-504, p. 1483, §1; Act 2014-220, p. 691, §1; Act 2015-363, §1.)

Section 37-15-3

Prohibition.

No person shall excavate in a street, highway, public easement, private easement, or implied easement of an operator, or on property of an operator, or conduct blasting operations, or perform demolition activities in the near proximity of an operator's underground facility without first having ascertained, in the manner prescribed in Sections 37-15-4 and 37-15-6, the location of all underground facilities in the area of the proposed excavation, blasting, or demolition; however, violation of this section shall not subject any person to the civil penalties of Section 37-15-10 provided the easement or underground facility is located on property owned by such person and such person did not have knowledge of the existence or presence of such easement or

underground facility.
(Acts 1994, No. 94-487, p. 911, §3.)

Section 37-15-4

Notice of intent to excavate or demolish.

(a) A permit issued pursuant to law authorizing excavation or demolition operations shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter. Any public agency issuing such permit shall notify the person receiving the permit of the notification requirements of this chapter; however, failure to provide such notification shall not make the State Department of Transportation subject to the penalties provided for in Section 37-15-10.

(b) Before commencing any excavation or demolition operation prohibited by Section 37-15-3, each person responsible for such excavation or demolition shall give written, telephonic, or electronic notice of such intent to excavate or demolish to the underground facility operator or a "One-Call Notification System" acting on behalf of the operator at least two but not more than 10 working days prior to the start of the proposed excavation and at least two working days but not more than 30 calendar days prior to the start of demolition or any blasting operations for either excavation or demolition. Written notice shall be by registered mail, return receipt requested, and shall be valid only upon receipt of the written information required by this chapter by the operator or by a "One-Call Notification System" acting on behalf of the operator.

(c) The notice required by subsection (b) of this section must contain the name, address, and telephone number of the person responsible for the excavation or the demolition and the person giving notice, the proposed starting date and time, the type of excavation or demolition operation to be conducted, the location of the proposed excavation or demolition with sufficient details to enable the operator to locate same with reasonable certainty, and whether or not explosives are to be used. In the event the location

requirements of this subsection cannot be met, the excavator shall mark the route or boundaries of the site of proposed excavation or demolition by means of white as the identifying color on stakes, flags, paint, buoys, or clearly identifiable materials placed on the surface of the ground or water.

(d) Notification to an operator or to a "One-Call Notification System" acting on behalf of the operator of an intent to excavate shall be valid for a period of 10 working days from the proposed starting date given for excavation and the notice to demolish shall be valid for a period of 20 working days from the starting date given. Each person responsible for excavation or demolition shall renew with the underground facility operator or a "One-Call Notification System" acting on behalf of the operator each notice of intent to excavate or demolish at least two working days prior to the expiration date of the notice if the excavation or demolition has not been completed.

(e) When engaged in an extensive and contiguous construction, demolition, or excavation activity, working agreements may be established to accomplish the intent and purpose of this chapter between operators, public agencies, and contractors after initial compliance with the notification provisions of this chapter.

(f) Compliance with the notice requirements of this section is not required of persons plowing less than 12 inches in depth for agricultural purposes.

(g) Compliance with the notice requirements of this section is not required by persons or operators excavating on their own property or easement when no other persons or operators have underground facilities on the property or easement.

(h) Except for those persons submitting design or survey locate requests, no person, including an operator, shall request markings of a site through the "One-Call Notification System" or an in-house program that meets the operational requirements as described in subsection (a) of Section 37-15-5, unless excavation is scheduled to commence. In addition, no person shall make repeated requests for remarking, unless the repeated request is required for

excavating to continue or due to circumstances not reasonably within the control of the person.

(Acts 1994, No. 94-487, p. 911, §4; Acts 1996, No. 96-666, p. 1127, §1; Act 2014-220, p. 691, §1.)

Section 37-15-4.1

Design or survey locate requests.

(a) Any person may submit a design or survey locate request to the "One-Call Notification System" or to an operator that provides an in-house program that meets the operational requirements as described in subsection (a) of Section 37-15-5. The design or survey locate request shall describe the tract or parcel of land for which the design or survey locate request has been submitted with sufficient particularity as defined by policies developed and promulgated by the "One-Call Notification System" or to an operator that provides an in-house program that meets the operational requirements as described in subsection (a) of Section 37-15-5 to enable the facility operator to ascertain the precise tract or parcel of land involved and state the name, address, telephone number, and facsimile number of the person who has submitted the design or survey locate request and the company name of the project owner.

(b) Within five working days after a design or survey locate request has been submitted to the "One-Call Notification System" or to an operator that provides an in-house program that meets the operational requirements as described in subsection (a) of Section 37-15-5 for a proposed project, the operator shall respond by one of the following methods:

(1) Marking the approximate location of all underground facilities in the area of proposed excavation.

(2) Providing to the person submitting the design or survey locate request the best available description of all underground facilities in the area of proposed excavation which may include drawings of underground facilities already built in the area or other facility records that are maintained by the facility operator.

(3) Allowing the person submitting the design or survey locate request or any other authorized person to inspect or copy the drawings or other records for all underground facilities within the proposed area of excavation.

(Act 2014-220, p. 691, §2.)

Section 37-15-5

Underground damage prevention program.

(a)(1) Operators who have underground facilities within this state shall either provide an in-house program which meets the operational requirements of receiving those excavation or demolition notifications as set forth in subsections (e) to (h), inclusive, of this section or shall participate in a "One-Call Notification System"; provided, however, that any operator who has less than ten thousand customers or subscribers and who provides an in-house program which meets all of the operational requirements of receiving those excavation or demolition notifications as set forth in this chapter shall not be required to provide the services of the in-house program on working days except during the hours that the operator's offices are open to the public and may, but shall not be required to, voice record the notification calls received.

(2) Any operator, who elects not to participate in the "One-Call Notification System" and instead elects to provide an in-house notification system for receiving excavation and demolition notifications as provided in subdivision (1) and whose facilities are damaged by an excavator who has contacted the "One-Call Notification System" and the operator's in-house program concerning the location of underground facilities, shall be responsible for any damages to its underground facilities by the excavator if the operator failed to meet the operational requirements for receiving excavation and demolition notifications as required.

(b) Between April 18, 1994 and January 1, 1995, or any time thereafter any non-profit corporation, public corporation, or

governmental entity desiring to become a "One-Call Notification System" shall apply to the Alabama Public Service Commission for a certificate of public convenience and necessity, verifying under oath that applicant meets the requirements of this chapter. After a public hearing on the application, if the Alabama Public Service Commission deems that applicant meets the requirements of this chapter, and if it is found that applicant is fit, willing, and able to properly perform the services proposed and that the proposed service is or will be required by the present or future public convenience or necessity, then in such event the Alabama Public Service Commission shall issue a certificate of public convenience and necessity authorizing applicant to commence its operation as a "One-Call Notification System". The Alabama Public Service Commission shall further have the authority, and is required, to revoke a certificate if the non-profit corporation, public corporation, or governmental entity ceases to meet the requirements as set forth in this chapter.

(c) The "One-Call Notification System" shall be incorporated or operated as a non-profit corporation and governed by a board of directors.

(d) Operators of underground natural gas or hazardous liquid pipeline facilities or the "One-Call Notification System" acting on their behalf shall develop and implement a public awareness and damage prevention program to educate the general public, excavators, and operators about the availability and use of the "One-Call Notification System" as required in applicable federal regulations and the requirements of this chapter.

(e) The person giving notice of intent to excavate or demolish shall be furnished an individual reference file number for each notification and upon request shall be furnished the names of the operators to whom the notification will be transmitted.

(f) An adequate record of notifications shall be maintained by the underground facility operator or the "One-Call Notification System" in order to document timely compliance with this chapter. These records shall be retained for a period of not less than three

years and shall be made available at a reasonable cost upon proper and adequate advance request.

(g) The services of the "One-Call Notification System" should be provided on working days at least between the hours of 8 A.M. and 5 P.M.

(h) A "One-Call Notification System" should voice record the notification telephone calls and after hours calls should at least reach a voice recording which explains emergency procedures.

(i) All members of the "One-Call Notification System" shall provide the "One-Call Notification System" with the following information:

(1) The notification area data in a format as required by the current database system utilized by the "One-Call Notification System" for the locations in which members have underground facilities or for other reasons wish to receive notifications of proposed excavations, demolitions, or blasting. This information shall be updated at least once a year.

(2) The name, address, and telephone number of a person to receive emergency notifications.

(j) The "One-Call Notification System" shall promptly transmit the information received from the excavator, as set forth in Section 37-15-4, to its appropriate member operators.

(k) All members of the "One-Call Notification System" who have changes, additions, or new installations of buried facilities within the boundaries of the State of Alabama shall notify the "One-Call Notification System" of changes in the information required in subdivision (1) of subsection (i), within 30 days of the completion of such change, addition, or new installation.

(Acts 1994, No. 94-487, p. 911, §5; Act 2012-504, p. 1483, §1; Act 2014-220, p. 691, §1.)

Section 37-15-6

Response to notice of intent to excavate or demolish.

(a)(1) Each operator served with notice in accordance with Section 37-15-4, with underground facilities in the area, shall mark or

cause to be marked or otherwise provide the approximate location of the operator's underground facilities by marking in a manner as prescribed herein prior to the proposed start of excavation, demolition, or blasting. If any underground facilities become damaged due to an operator furnishing inaccurate information as to the approximate location of the facilities, through no fault of the operator, then the civil liabilities imposed by this chapter do not apply.

(2) In lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, demolition, or blasting.

(3) When an excavator encounters an unmarked underground facility on an excavation site where notice of intent to excavate has been made in accordance with the provisions of Section 37-15-4, and attempts a follow-up or second notice relative to revising the original notice to the "One-Call Notification System" or the operator, all operators thus notified must attempt to contact the excavator within four hours and provide a response relative to any of their known underground facilities, active or abandoned, at the site of the excavation.

(b) When marking the approximate location of underground facilities, the operator shall follow the color code designation in accordance with the latest edition of the American Public Works Association Uniform Color Code.

(c) The color code designation referenced in this section shall not be used by any operator or person to mark the boundary or location of any excavation or demolition area. If the excavator elects to mark the proposed excavation or demolition site, the boundary or location shall be identified using white as the identifying color or with natural color wood stakes. White flags or white stakes may have a thin stripe, one inch or less of the designated color code, to indicate the excavator's proposed type of facility, if applicable.

(d) Any contract locator acting on behalf of an operator is subject to this section.

(Acts 1994, No. 94-487, p. 911, §6; Act 2014-220, p. 691, §1.)

Section 37-15-7

Emergency excavation or demolition.

(a) Compliance with the notice requirements of Section 37-15-4 is not required of persons responsible for emergency excavation or demolition; provided, however, that such person gives, before commencing or as soon as practicable thereafter, notice of the emergency excavation or demolition to each operator having underground facilities located in the area or to the "One-Call Notification System" acting on behalf of the operator. However, every person who shall engage in such emergency excavation or demolition shall take all necessary and reasonable precautions to avoid or minimize damage to existing underground facilities.

(b) An excavator misrepresenting an emergency excavation or demolition is subject to the civil penalties imposed pursuant to Section 37-15-10.

(Acts 1994, No. 94-487, p. 911, §7; Act 2014-220, p. 691, §1.)

Section 37-15-8

Precaution to avoid damage.

In addition to the notification requirements of Section 37-15-4, each person responsible for an excavation or demolition operation designated in Section 37-15-3, when performing excavation or demolition within the tolerance zone, shall do all of the following to avoid damage to or minimize interference with the underground facilities:

- (1) Determine the location of any marked underground facility utilizing noninvasive methods of excavation. For parallel type excavations, the existing facility shall be exposed at intervals as often as necessary to avoid damages.
- (2) Maintain a clearance of at least 18 inches between any underground facility and the cutting edge or point of mechanized equipment.
- (3) Provide such support for underground facilities in and near a construction area, including backfill operations, as may be

reasonably required by the operator for the protection of the utilities.

(4) Protect and preserve the markings of approximate locations of underground facilities until those markings are no longer required for proper and safe excavation or demolition.

(Acts 1994, No. 94-487, p. 911, §8; Act 2014-220, p. 691, §1.)

Section 37-15-9

Excavation or demolition damage.

(a) Each person responsible for any excavation or demolition operation that results in any damage to an underground facility, immediately upon discovery of such damage, shall notify the operator of such facility of the location of the damage or the one-call notification center operating on behalf of the underground facility owner and shall allow the operator reasonable time to accomplish any necessary repairs before completing the excavation or demolition in the immediate area of the damage to such facility.

(b) In addition to subsection (a), each person responsible for any excavation or demolition shall immediately report to the operator or the one-call notification center operating on behalf of the underground facility owner and appropriate law enforcement agencies and fire departments any damage to an underground facility that results in escaping flammable, corrosive, explosive, or toxic liquids or gas and shall take reasonable actions necessary to protect persons or property and to minimize safety hazards until those law enforcement agencies and fire departments and the operator arrive at the underground facility.

(Acts 1994, No. 94-487, p. 911, §9; Act 2014-220, p. 691, §1.)

Section 37-15-10

Penalties.

(a) Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed \$10,000 for each such violation.

(b) An action under this section shall be instigated by any person making a complaint in writing, verified by oath, that the person has

reason to believe that a violation under this chapter has occurred.

(c) Prosecution of violations of this chapter shall be by district attorney or the Attorney General and shall be brought in the circuit court for the county in which the violation, or some part thereof, arose or in the circuit court for the county in which the defendant resides or maintains his or her principal place of business within the state.

(d) The amount of such penalties shall be dependent upon the degree of non-compliance, the amount of injury or damage caused, the degree of threat to public safety, the degree of public inconvenience caused as a result of the violation, and the number of past violations. Mitigation of the penalty may be shown by "good faith" efforts of the violator to have complied with the provisions of this chapter.

(e) All penalties recovered in such actions shall be paid into the General Fund of the State of Alabama.

(f) In any successful action or petition brought under this section, the court shall award the office of the Attorney General or the office of the district attorney reasonable attorney's fees and costs.

(g) Any person who violates any provision of this chapter shall not be subject to payment of the assessed penalty in subsection (a) if he or she has been assessed a civil penalty for this same violation under the provisions of the Federal Natural Gas Pipeline Safety Act of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of 1979 or any amendment to these acts.

(h) This chapter does not affect any civil remedies for personal injury or property damage or criminal sanctions except as otherwise specifically provided for in this chapter.

(i) No civil penalty may be imposed pursuant to this section against an excavator or operator who violates any provision of this chapter if the violation occurred while the excavator or operator was responding to an emergency. Notwithstanding the foregoing, the civil penalty shall be imposed if the violation was willful or malicious.

(j) This section shall not be construed to limit any provision of law

granting governmental immunity to state or local entities or to impose any liability or duty of care not otherwise imposed by law upon any state or local entity.

(k) Any person who willfully or maliciously removes or otherwise destroys a marking used by an operator to mark the location of any underground facility, except in the ordinary course of excavation, is guilty of a Class C misdemeanor.

(Acts 1994, No. 94-487, p. 911, §10; Act 2014-220, p. 691, §1.)

Section 37-15-11

Liberal construction.

The provisions of this chapter shall be liberally construed as to effectuate the purposes of this chapter and the operation of a "One-Call Notification System."

(Acts 1994, No. 94-487, p. 911, §11.)