



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5491

Introduced 2/5/2010, by Rep. Donald L. Moffitt

SYNOPSIS AS INTRODUCED:

220 ILCS 50/8
220 ILCS 50/11

from Ch. 111 2/3, par. 1608
from Ch. 111 2/3, par. 1611

Amends the Illinois Underground Utility Facilities Damage Prevention Act. Provides that any residential property owner who willfully fails to comply with any provision of the Act while engaging in excavation or demolition on such residential property shall not be subject to a penalty under the Act for a first-time offense of the Act, but shall be subject to a penalty of up to \$500 for each separate offense for any subsequent willful failures to comply with the Act. Provides that any residential property owner who fails to comply with any provision of the Act while engaging in excavation or demolition on a residential property shall be liable for the damage caused to the owner or operator of the damaged underground utility facilities or CATS facilities unless the damages resulted from the failure of owners or operators of underground facilities to comply with the provisions of the Act. Provides that the Illinois Commerce Commission may impose administrative penalties as provided in the Act (instead of a specified Section). Effective immediately.

LRB096 15180 MJR 30251 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 8 and 11
6 as follows:

7 (220 ILCS 50/8) (from Ch. 111 2/3, par. 1608)

8 Sec. 8. Liability or financial responsibility.

9 (a) Nothing in this Act shall be deemed to affect or
10 determine the financial responsibility for any operation under
11 this Act or liability of any person for any damages that occur
12 unless specifically stated otherwise.

13 (b) Nothing in this Act shall be deemed to provide for
14 liability or financial responsibility of the Department of
15 Transportation, its officers and employees concerning any
16 underground utility facility or CATS facility located on
17 highway right-of-way by permit issued under the provisions of
18 Section 9-113 of the Illinois Highway Code. It is not the
19 intent of this Act to change any remedies in law regarding the
20 duty of providing lateral support.

21 (c) Neither the State-Wide One-Call Notice System nor any
22 of its officers, agents, or employees shall be liable for
23 damages for injuries or death to persons or damage to property

1 caused by acts or omissions in the receipt, recording, or
2 transmission of locate requests or other information in the
3 performance of its duties as the State-Wide One-Call Notice
4 System, unless the act or omission was the result of willful
5 and wanton misconduct.

6 (d) Any residential property owner who willfully fails to
7 comply with any provision of this Act ~~and damages underground~~
8 ~~utility facilities or CATS facilities~~ while engaging in
9 excavation or demolition on such residential property shall not
10 be subject to a penalty under this Act for a first-time offense
11 of this Act, but shall be subject to a penalty of up to \$500 for
12 each separate offense for any subsequent willful failures to
13 comply with this Act. Any residential property owner who fails
14 to comply with any provision of this Act while engaging in
15 excavation or demolition on a residential property, but shall
16 be liable for the damage caused to the owner or operator of the
17 damaged underground utility facilities or CATS facilities
18 unless the damages resulted from the failure of owners or
19 operators of underground facilities to comply with the
20 provisions of this Act.

21 (Source: P.A. 92-179, eff. 7-1-02.)

22 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

23 Sec. 11. Penalties; liability; fund.

24 (a) Every person who, while engaging in excavation or
25 demolition, wilfully fails to comply with the Act by failing to

1 provide the notice to the owners or operators of the
2 underground facilities near the excavation or demolition area
3 through the State-Wide One-Call Notice System as required by
4 Section 4 or 6 of this Act shall be subject to a penalty of up
5 to \$5,000 for each separate offense and shall be liable for the
6 damage caused to the owners or operators of the facility. Every
7 person who fails to provide notice and willfully fails to
8 comply with other provisions of this Act shall be subject to
9 additional penalties of up to \$2,500 for each separate offense
10 and shall be liable for the damage caused to the owners or
11 operators of the facility.

12 (b) Every person who has provided the notice to the owners
13 or operators of the underground utility facilities in and near
14 the excavation or demolition area through the State-Wide
15 One-Call Notice System as required by Section 4 or 6 of this
16 Act, but otherwise wilfully fails to comply with this Act,
17 shall be subject to a penalty of up to \$2,500 for each separate
18 offense and shall be liable for the damage caused to the owners
19 or operators of the facility.

20 (c) Every person who, while engaging in excavation or
21 demolition, has provided the notice to the owners or operators
22 of the underground utility facilities in and near the
23 excavation or demolition area through the State-Wide One-Call
24 Notice System as required by Section 4 or 6 of this Act, but
25 otherwise, while acting reasonably, damages any underground
26 utility facilities, shall not be subject to a penalty, but

1 shall be liable for the damage caused to the owners or
2 operators of the facility provided the underground utility
3 facility is properly marked as provided in Section 10 of this
4 Act.

5 (d) Every person who provides notice to the owners or
6 operators of the underground utility facilities through the
7 State-Wide One-Call Notice System as an emergency locate
8 request and the locate request is not an emergency locate
9 request as defined in Section 2.6 of this Act shall be subject
10 to a penalty of up to \$2,500 for each separate offense.

11 (e) Owners and operators of underground utility facilities
12 who willfully fail to comply with this Act by a failure to
13 respond or mark the approximate location of an underground
14 utility as required by subsection (h) of Section 4, subsection
15 (a) of Section 6, or Section 10 of this Act after being
16 notified of planned excavation or demolition through the
17 State-Wide One-Call Notice System, shall be subject to a
18 penalty of up to \$5,000 for each separate offense.

19 (f) As provided in Section 3 of this Act, all owners or
20 operators of underground utility facilities who fail to join
21 the State-Wide One-Call Notice System by January 1, 2003 shall
22 be subject to a penalty of \$100 per day for each separate
23 offense. Every day an owner or operator fails to join the
24 State-Wide One-Call Notice System is a separate offense. This
25 subsection (f) does not apply to utilities operating facilities
26 exclusively within the boundaries of a municipality with a

1 population of at least 1,000,000 persons.

2 (g) No owner or operator of underground utility facilities
3 shall be subject to a penalty where a delay in marking or a
4 failure to mark or properly mark the location of an underground
5 utility is caused by conditions beyond the reasonable control
6 of such owner or operator.

7 (h) Any person who is neither an agent, employee, or
8 authorized locating contractor of the owner or operator of the
9 underground utility facility nor an excavator involved in the
10 excavation activity who removes, alters, or otherwise damages
11 markings, flags, or stakes used to mark the location of an
12 underground utility other than during the course of the
13 excavation for which the markings were made or before
14 completion of the project shall be subject to a penalty up to
15 \$1,000 for each separate offense.

16 (i) (Blank).

17 (j) The Illinois Commerce Commission shall have the power
18 and jurisdiction to, and shall, enforce the provisions of this
19 Act. The Illinois Commerce Commission may impose
20 administrative penalties as provided in this Act ~~Section~~. The
21 Illinois Commerce Commission may promulgate rules and develop
22 enforcement policies in the manner provided by the Public
23 Utilities Act in order to implement compliance with this Act.
24 When a penalty is warranted, the following criteria shall be
25 used in determining the magnitude of the penalty:

26 (1) gravity of noncompliance;

1 (2) culpability of offender;

2 (3) history of noncompliance for the 18 months prior to
3 the date of the incident; however, when determining
4 non-compliance the alleged violator's roles as operator or
5 owner and the person engaged in excavating shall be treated
6 separately;

7 (4) ability to pay penalty;

8 (5) show of good faith of offender;

9 (6) ability to continue business; and

10 (7) other special circumstances.

11 (k) There is hereby created in the State treasury a special
12 fund to be known as the Illinois Underground Utility Facilities
13 Damage Prevention Fund. All penalties recovered in any action
14 under this Section shall be paid into the Fund and shall be
15 distributed annually as a grant to the State-Wide One-Call
16 Notice System to be used in safety and informational programs
17 to reduce the number of incidents of damage to underground
18 utility facilities in Illinois. The distribution shall be made
19 during January of each calendar year based on the balance in
20 the Illinois Underground Utility Facilities Damage Prevention
21 Fund as of December 31 of the previous calendar year. In all
22 such actions under this Section, the procedure and rules of
23 evidence shall conform with the Code of Civil Procedure, and
24 with rules of courts governing civil trials.

25 (l) The Illinois Commerce Commission shall establish an
26 Advisory Committee consisting of a representative from each of

1 the following: utility operator, JULIE, excavator,
2 municipality, and the general public. The Advisory Committee
3 shall serve as a peer review panel for any contested penalties
4 resulting from the enforcement of this Act.

5 The members of the Advisory Committee shall be immune,
6 individually and jointly, from civil liability for any act or
7 omission done or made in performance of their duties while
8 serving as members of such Advisory Committee, unless the act
9 or omission was the result of willful and wanton misconduct.

10 (m) If, after the Advisory Committee has considered a
11 particular contested penalty and performed its review
12 functions under this Act and the Commission's rules, there
13 remains a dispute as to whether the Commission should impose a
14 penalty under this Act, the matter shall proceed in the manner
15 set forth in Article X of the Public Utilities Act, including
16 the provisions governing judicial review.

17 (Source: P.A. 96-714, eff. 1-1-10.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.