

By: Hilderbran

H.B. No. 263

Substitute the following for H.B. No. 263:

By: Cook

C.S.H.B. No. 263

A BILL TO BE ENTITLED

AN ACT

relating to an excavator's duties during an emergency excavation;
providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 251.155, Utilities Code, is amended to
read as follows:

Sec. 251.155. EXCEPTION IN CASE OF EMERGENCY; OFFENSE. (a)
Section 251.151 does not apply to an emergency excavation that is
necessary to respond to a situation that endangers life, health, or
property or that involves a natural gas or hazardous liquid
pipeline [~~or a situation in which the public need for uninterrupted~~
~~service and immediate reestablishment of service if service is~~
~~interrupted compels immediate action~~].

(b) The excavator may begin emergency excavation under
Subsection (a) immediately and shall take special [~~reasonable~~]
precautions to protect underground facilities.

(c) When an emergency exists, the excavator shall:

(1) notify a notification center as promptly as
practicably [~~reasonably~~] possible; and

(2) immediately cease all excavation efforts if
advised by an underground facility operator to cease all excavation
efforts.

(d) An excavator may not misrepresent a fact or circumstance
used in the determination of an emergency excavation under

1 Subsection (a). A person that violates this subsection is subject
2 to a penalty under:

3 (1) Section 251.201;

4 (2) Section 251.203; or

5 (3) both Sections 251.201 and 251.203.

6 SECTION 2. Section 251.201, Utilities Code, is amended by
7 adding Subsections (a-1), (b-1), and (c-1) and amending Subsections
8 (b) and (c) to read as follows:

9 (a-1) An excavator that violates Section 251.155(d) is
10 liable for a civil penalty of not less than \$1,000 or more than
11 \$2,000. If a county attorney or district attorney decides not to
12 bring an action to recover the civil penalty, the board of directors
13 of the corporation may, in accordance with Section 251.2011, give
14 the excavator a warning letter and require the excavator to attend a
15 safety training course approved by the board. The county attorney
16 or district attorney shall notify the board of its decision.

17 (b) Except as provided by Subsection (b-1), if [~~if~~] it is
18 found at the trial on a civil penalty that the excavator has
19 violated this chapter and has been assessed a penalty under this
20 section or has received a warning letter from the board one other
21 time before the first anniversary of the date of the most recent
22 violation, the excavator is liable for a civil penalty of not less
23 than \$1,000 or more than \$2,000.

24 (b-1) If it is found at the trial on a civil penalty that the
25 excavator has violated Section 251.155(d) and has been assessed a
26 penalty under this section or has received a warning letter from the
27 board one other time before the first anniversary of the date of the

1 most recent violation, the excavator is liable for a civil penalty
2 of not less than \$2,000 or more than \$5,000.

3 (c) Except as provided by Subsection (c-1), if [~~if~~] it is
4 found at the trial on a civil penalty that the excavator has
5 violated this chapter and has been assessed a penalty under this
6 section at least two other times before the first anniversary of the
7 date of the most recent violation, or has been assessed a penalty at
8 least one other time before the first anniversary of the date of the
9 most recent violation and has received a warning letter from the
10 board during that period, the excavator is liable for a civil
11 penalty of not less than \$2,000 or more than \$5,000.

12 (c-1) If it is found at the trial on a civil penalty that the
13 excavator has violated Section 251.155(d) and has been assessed a
14 penalty under this section at least two other times before the first
15 anniversary of the date of the most recent violation, or has been
16 assessed a penalty at least one other time before the first
17 anniversary of the date of the most recent violation and has
18 received a warning letter from the board during that period, the
19 excavator is liable for a civil penalty of not less than \$5,000 or
20 more than \$10,000.

21 SECTION 3. The heading to Section 251.203, Utilities Code,
22 is amended to read as follows:

23 Sec. 251.203. CRIMINAL PENALTY [~~FOR REMOVAL, DAMAGE, OR~~
24 ~~CONCEALMENT OF MARKER OR SIGN)].~~

25 SECTION 4. Section 251.203, Utilities Code, is amended by
26 adding Subsection (a-1) to read as follows:

27 (a-1) A person commits an offense if the person

1 intentionally or recklessly violates Section 251.155(d).

2 SECTION 5. Subchapter E, Chapter 251, Utilities Code, is
3 amended by adding Section 251.204 to read as follows:

4 Sec. 251.204. RAILROAD COMMISSION PENALTY. This chapter
5 does not supersede, limit, or otherwise interfere with the
6 authority of the Railroad Commission of Texas to impose or enforce a
7 penalty against a person who violates damage prevention safety
8 standards that relate to excavating in the vicinity of a pipeline.

9 SECTION 6. The changes in law made by this Act apply only to
10 conduct occurring on or after the effective date of this Act.
11 Conduct occurring before the effective date of this Act is governed
12 by the law in effect on the date the conduct occurred, and the
13 former law is continued in effect for that purpose.

14 SECTION 7. This Act takes effect September 1, 2011.