

By: Hilderbran

H.B. No. 263

A BILL TO BE ENTITLED

AN ACT

relating to an excavator's duty to notify a notification center before excavating; 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 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 the notification center or other governing authority to cease all excavation efforts.

(d) An excavator may not misrepresent a fact or circumstance used in the determination of an emergency excavation under Subsection (a). A person that violates this subsection is subject

1 to a penalty under:

2 (1) Section 251.201;

3 (2) Section 251.203; or

4 (3) both Sections 251.201 and 251.203.

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

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

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

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

1 of not less than \$2,000 or more than \$5,000.

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

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

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

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

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

26 (a-1) A person commits an offense if the person  
27 intentionally or recklessly violates Section 251.155(d).

1           SECTION 5. The changes in law made by this Act apply only to  
2 conduct occurring on or after the effective date of this Act.  
3 Conduct occurring before the effective date of this Act is governed  
4 by the law in effect on the date the conduct occurred, and the  
5 former law is continued in effect for that purpose.

6           SECTION 6. This Act takes effect September 1, 2011.