

By: Estes
(Hilderbran)

S.B. No. 1217

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 reasonable care [~~precautions~~] to protect underground facilities.

(c) When an emergency exists, the excavator shall notify a notification center as promptly as practicably [~~reasonably~~] possible.

(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 to a penalty under:

(1) Section 251.201;

(2) Section 251.203; or

1 (3) both Section 251.201 and Section 251.203.

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

5 (a-1) An excavator that violates Section 251.155(d) is
6 liable for a civil penalty of not less than \$1,000 or more than
7 \$2,000. If a county attorney or district attorney decides not to
8 bring an action to recover the civil penalty, the board of directors
9 of the corporation may, in accordance with Section 251.2011, give
10 the excavator a warning letter and require the excavator to attend a
11 safety training course approved by the board. The county attorney
12 or district attorney shall notify the board of its decision.

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

20 (b-1) If it is found at the trial on a civil penalty that the
21 excavator has violated Section 251.155(d) and has been assessed a
22 penalty under this section or has received a warning letter from the
23 board one other time before the first anniversary of the date of the
24 most recent violation, the excavator is liable for a civil penalty
25 of not less than \$2,000 or more than \$5,000.

26 (c) Except as provided by Subsection (c-1), if [~~if~~] it is
27 found at the trial on a civil penalty that the excavator has

1 violated this chapter and has been assessed a penalty under this
2 section at least two other times before the first anniversary of the
3 date of the most recent violation, or has been assessed a penalty at
4 least one other time before the first anniversary of the date of the
5 most recent violation and has received a warning letter from the
6 board during that period, the excavator is liable for a civil
7 penalty of not less than \$2,000 or more than \$5,000.

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

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

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

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

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

25 SECTION 5. The changes in law made by this Act apply only to
26 conduct occurring on or after the effective date of this Act.
27 Conduct occurring before the effective date of this Act is governed

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1 by the law in effect on the date the conduct occurred, and the
2 former law is continued in effect for that purpose.

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