

HOUSE BILL NO. HB0057

Damage to underground public utilities.

Sponsored by: Representative(s) Stubson

A BILL

for

1 AN ACT relating to underground public utilities; providing
2 for civil penalties for damages to underground public
3 utilities; providing notification requirements before
4 excavations; providing definitions; providing for
5 mitigation of damages; providing for safety training
6 programs; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 37-12-306 is created to read:

11

12 **37-12-306. Civil penalties; applicability.**

13

14 (a) An action to recover a civil penalty under this
15 section may be brought by an operator, excavator, aggrieved
16 party, the notification center, county attorney, district
17 attorney or the attorney general. Venue for an action

1 shall be in the district court for the county in which the
2 operator, excavator, aggrieved party or the notification
3 center resides or maintains a principal place of business
4 in this state or in the county in which the conduct giving
5 rise to a civil penalty occurred. The action provided in
6 this subsection may be by jury trial if a jury is demanded
7 by either party.

8

9 (b) In determining the liability for or the amount of
10 any damages or civil penalty pursuant to this section, a
11 court shall consider the nature, circumstances and gravity
12 of the alleged violation, the alleged violator's degree of
13 culpability and the alleged violator's history of prior
14 violations.

15

16 (c) The penalties provided in this section are in
17 addition to any other remedy at law or equity available to
18 an excavator or to the operator of a damaged underground
19 facility.

20

21 (d) No civil penalty shall be imposed under this
22 section against an excavator or operator who violates any
23 of the provisions of this article if the violation occurred
24 while the excavator or operator was responding to a service

1 outage or other emergency, except that such penalty shall
2 be imposed if such violation was willful or malicious.

3

4 (e) This section shall not apply to any governmental
5 entity as defined by W.S. 1-39-103(a)(i), which
6 participates in the notification center as provided by this
7 act. Nothing in this article shall affect any provision of
8 the Wyoming Governmental Claims Act, W.S. 1-39-101 through
9 1-39-120.

10

11 (f) Any civil penalty received under subsection (g)
12 or (h) of this section shall be deposited into the county
13 public school fund of the county in which the violation
14 occurred.

15

16 (g) With respect to operators:

17

18 (i) Every operator in Wyoming shall join the
19 notification center pursuant to W.S. 37-12-304(a). Any
20 operator who does not join the notification center shall be
21 liable for a fine of five hundred dollars (\$500.00) each
22 year it is not in compliance with this subsection;

23

1 (ii) If any underground facility located in the
2 service area of an operator is damaged as a result of the
3 operator's failure to join the notification center pursuant
4 to W.S. 37-12-304(a), the court shall impose upon such
5 operator a civil penalty up to the amount of five thousand
6 dollars (\$5,000.00) for the first offense and up to twenty-
7 five thousand dollars (\$25,000.00) for a second offense
8 within a twelve (12) month period after the first offense.
9 If any underground facility located in the service area of
10 an operator is damaged as a result of the operator's
11 failure to join the notification center pursuant to W.S.
12 37-12-304(a) on more than two (2) separate occasions within
13 a twelve (12) month period from the date of the first
14 failure to comply with W.S. 37-12-304(a), then the civil
15 penalty shall be up to seventy-five thousand dollars
16 (\$75,000.00). Upon a first offense, the operator may be
17 required by the court to complete an excavation safety
18 training program with the notification center;

19

20 (iii) If any underground facility is damaged as
21 a result of the operator's failure to comply with W.S.
22 37-12-304(a) or failure to use reasonable care in the
23 marking of the damaged underground facility, the operator
24 shall be liable for:

1

2 (A) Any cost or damage incurred by the
3 excavator as a result of any delay in the excavation
4 project while the underground facility is restored,
5 repaired or replaced, together with reasonable costs and
6 expenses of suit, including reasonable attorney fees; and

7

8 (B) Any injury or damage to persons or
9 property resulting from the damage to the underground
10 facility. The operator shall also indemnify and defend the
11 affected excavator against any and all claims or actions,
12 if any, for personal injury, death, property damage or
13 service interruption resulting from the damage to the
14 underground facility.

15

16 (h) With respect to excavators:

17

18 (i) Every excavator shall notify the
19 notification center pursuant to W.S. 37-12-302(c) prior to
20 commencing any excavation activity. Any excavator who
21 fails to notify the notification center pursuant to W.S.
22 37-12-302(c) shall be liable for a civil penalty in the
23 amount of five hundred dollars (\$500.00);

24

1 (ii) If an excavator fails to comply with W.S.
2 37-12-302(c) and damages an underground facility during
3 excavation, the excavator shall be liable for a civil
4 penalty up to the amount of five thousand dollars
5 (\$5,000.00) for the first offense and up to twenty-five
6 thousand dollars (\$25,000.00) for a second offense within a
7 twelve (12) month period after the date of the first
8 offense. If an excavator fails to comply with W.S.
9 37-12-302(c) on more than two (2) separate occasions within
10 a twelve (12) month period from the date of the first
11 failure to comply with W.S. 37-12-302(c), then the civil
12 penalty shall be up to seventy-five thousand dollars
13 (\$75,000.00). Upon a first offense, the excavator may be
14 required to complete an excavation safety training program
15 with the notification center;

16

17 (iii) If an excavator requests a facilities
18 locate on an expedited basis (less than two (2) full
19 business days) for an emergency excavation and the
20 excavation at issue was not an emergency and did not
21 require a locate on an expedited basis, the excavator shall
22 be liable for a civil penalty of up to five hundred dollars
23 (\$500.00) for each false emergency locate incident;

24

1 (iv) If an excavator damages a located
2 underground facility by failing to utilize reasonable care
3 during an excavation, the excavator shall be liable for:

4
5 (A) Any cost or damage incurred by the
6 operator in restoring, repairing or replacing its damaged
7 underground facility, together with reasonable costs and
8 expenses of suit, including reasonable attorney fees; and

9
10 (B) Any injury or damage to persons or
11 property resulting from the damage to the underground
12 facility. The excavator shall also indemnify and defend the
13 operator against any and all claims or actions, if any, for
14 personal injury, death, property damage or service
15 interruption resulting from the damage to the underground
16 facility.

17
18 (v) Subparagraph (iv)(A) of this subsection
19 shall not apply to an excavator if the operator of the
20 underground facility has failed to comply with W.S.
21 37-12-302(d) or 37-12-304(a).

22

23 **Section 2.** W.S. 37-12-301(b)(ii), (iii), by creating
24 a new paragraph (iv), by renumbering (iv) and (v) as (v)

1 and (vi), by creating a new paragraph (vii), by renumbering
2 (vi) through (ix) as (viii) through (xi) and by amending
3 and renumbering (x) as (xii), 37-12-302(a), (b),
4 (c)(intro), (i), (iii), (d), (f), (g) and (h),
5 37-12-304(a), (b)(iii) by creating a new subparagraph (C),
6 (vii) and by creating a new paragraph (ix) and 37-12-305(e)
7 are amended to read:

8
9 **37-12-301. Short title; definitions.**

10
11 (b) As used in this act:

12
13 (ii) "Emergency" means ~~an~~ a sudden, unforeseen
14 occurrence, including a loss of communications, which
15 demands immediate action to protect the health, safety and
16 welfare of the public and to prevent loss of life, health,
17 property or essential public services and advance notice to
18 the notification center prior to excavation is
19 impracticable under the circumstances. "Emergency" shall
20 include ruptures and leakage of pipelines, explosions,
21 fires and similar instances where immediate action is
22 necessary to prevent loss of life or significant damage to
23 underground facilities or the environment;

1 (iii) "Excavation" or "excavates" means any
2 operation in which earth, rock or other ~~material~~ materials
3 on or below the ground is moved or otherwise displaced by
4 means of hand or power tools, power equipment or explosives
5 or other means, and includes grading, trenching, digging,
6 ditching, drilling, augering, tunneling, boring, plowing-
7 in, pulling-in, ripping, scraping and cable or pipe
8 installing, except tilling of soil and gardening or
9 agricultural purposes;

10

11 (iv) "Excavator" means any person or entity that
12 excavates or conducts excavation activities;

13

14 ~~(iv)~~ (v) "Impoundment" means a closed basin
15 formed naturally, or artificially built, which is dammed or
16 excavated for the retention of water, slurry or other
17 liquid or semi-liquid material;

18

19 ~~(v)~~ (vi) "Notification center" means a center
20 that receives notice from excavators of planned excavation
21 or other requests for location and transmits this notice to
22 participating operators;

23

1 (vii) "Operator" means any person, including
2 public utilities, municipal corporations, political
3 subdivisions or other persons having the legal authority to
4 bury, operate, maintain, repair or replace underground
5 facilities;

6
7 ~~(vi)~~ (viii) "Person" means an individual,
8 partnership, municipality, state, county, political
9 subdivision, utility, joint venture, corporation, limited
10 liability company, statutory trust or other business entity
11 and includes the employer of an individual;

12
13 ~~(vii)~~ (ix) "Secured facility" means a parcel of
14 land used for commercial or industrial purposes that is
15 surrounded entirely by a fence or other means of preventing
16 access, including a fence with one (1) or more gates that
17 are locked at all times or monitored by a person who can
18 prevent unauthorized access;

19
20 ~~(viii)~~ (x) "Sump" means a surface pit into which
21 drilling mud flows on reaching the surface of the well
22 after being pumped through the drill pipe and bit, then up
23 through the annular opening between the walls of the hole

1 and the drill pipe, carrying with it cuttings from the
2 well, which settle out of the mud in the sump pits;

3
4 ~~(ix)~~ (xi) "Underground facility" means any item
5 of personal property buried or placed below ground for use
6 in connection with the storage or conveyance of water,
7 sewage, electronic, telephonic or ~~telegraphic~~ other form of
8 electronic communications, cable television, electric
9 energy, oil, gas, hazardous liquids or other substances and
10 including but not limited to pipes, sewers, conduits,
11 cables, valves, lines, wires, manholes and attachments;

12
13 ~~(x)~~ (xii) "This act" means W.S. 37-12-301 through
14 ~~37-12-305~~ 37-12-306.

15
16 37-12-302. Notice of excavation by excavator;
17 information to be supplied upon notice; exceptions;
18 penalty.

19
20 (a) Every ~~person having the right to bury underground~~
21 ~~facilities~~ operator shall file with the notification center
22 a general description of the area served together with the
23 name, address and telephone number of the person from whom

1 necessary information may be obtained concerning the
2 location of underground facilities.

3
4 (b) Any person requiring ~~excavation or design for or~~
5 designing architectural or engineering drawings that call
6 for excavation shall obtain information from ~~persons with~~
7 ~~underground facilities operators~~, as to the nature,
8 location, and depth if known, of underground facilities. If
9 the information is not available, the person requiring or
10 designing architectural or engineering drawings that call
11 for excavation shall determine at their expense the nature
12 and location of the underground facilities. The person
13 requiring or designing architectural or engineering
14 drawings that call for excavation shall make the
15 information and location a part of the plan by which the
16 excavators operate. ~~This subsection shall not apply to~~
17 ~~underground facility owners performing excavation on their~~
18 ~~own underground facilities.~~

19
20 (c) Except as hereafter provided, no ~~person~~ excavator
21 shall make or begin excavation without first notifying ~~any~~
22 ~~person having underground facilities in the area~~ the
23 notification center of the proposed excavation. Notice
24 shall be given by ~~any~~ telephone, e-mail, fax or other

1 electronic medium ~~or in person~~ approved by the notification
2 center at least two (2) full business days, but not more
3 than fourteen (14) business days prior to any excavation to
4 the notification center pursuant to W.S. 37-12-304. Unless
5 the location marks are still visible, if an excavation on a
6 single project lasts more than fourteen (14) business days,
7 the excavator shall give notice at least once each
8 succeeding fourteen (14) business day period. Notice to the
9 notification center is notice to each member thereof in the
10 area. Notification of the following information to the
11 notification center shall be required and shall include the
12 following:

13

14 (i) Name of the person notifying the ~~system~~
15 notification center;

16

17 (iii) Specific location by legal description or
18 other reliable method that allows for current and accurate
19 means of identifying geographic locations, and starting
20 date and description of the intended activity.

21

22 (d) ~~A person~~ An operator shall at ~~their~~ its expense,
23 upon receipt of the notice provided for in subsection (c)
24 of this section, use reasonable care to mark the location

1 of the underground facilities with stakes, flags, paint or
2 by other clearly identifiable marking within twenty-four
3 (24) inches horizontally from the exterior sides of the
4 operator's underground facilities. The location shall be
5 marked using American Public Works Association uniform
6 color standards. If requested by the excavator, the person
7 operator receiving the notice shall advise the excavator of
8 the nature, location, size, function and depth if known, of
9 underground facilities in the proposed excavation area. The
10 ~~person providing information~~ operator shall respond no
11 later than two (2) full business days after receipt of the
12 notice from the notification center or at a time otherwise
13 mutually agreed to by the ~~parties~~ operator and excavator.

14
15 (f) If information ~~requested~~ required pursuant to
16 ~~subsections (c) and~~ subsection (d) of this section is not
17 provided within the time specified therein, or if the
18 information provided fails to identify the location of the
19 underground facilities in accordance with subsection (d) of
20 this section, then any ~~person~~ excavator damaging or
21 injuring underground facilities shall not be liable for
22 such damage or injury except on proof of negligence.
23 However, if information ~~requested~~ required pursuant to
24 ~~subsections (c) and~~ subsection (d) of this section is

1 provided within the time specified therein, and if the
2 information provided sufficiently identifies the location
3 of the underground facilities in accordance with subsection
4 (d) of this section, then any ~~person~~excavator damaging or
5 injuring underground facilities shall be liable for all
6 damage or injury to persons or property.

7
8 (g) Compliance with this section does not excuse ~~a~~
9 ~~person from acting in a careful and prudent manner~~an
10 excavator from exercising reasonable care in complying with
11 this act nor does compliance with this section excuse ~~a~~
12 ~~person~~an excavator from liability for damage or injury for
13 failure to so act.

14
15 (h) When any contact with or damage to any
16 underground facility occurs, the excavator shall
17 immediately ~~inform~~notify the operator of the facility and
18 the notification center, of the location of and extent of
19 damage to the underground facility and shall cooperate with
20 the operator of the damaged underground facility to
21 mitigate the damages incurred to the extent reasonably
22 possible, including the provision of in-kind work where
23 technical or special skills are not required according to
24 the nature of the underground facility. An excavator shall

1 not conceal or attempt to conceal any dislocation,
2 disturbance or damage to an underground facility and shall
3 not repair or attempt to repair the underground facility
4 unless authorized by the operator of the underground
5 facility. Upon notification of damage to an underground
6 facility from an excavator, the operator of the underground
7 facility shall respond to the notification in a manner
8 reasonably appropriate to the circumstances. The operator
9 shall file a report with the notification center describing
10 the response within seventy-two (72) hours of the initial
11 notification. This requirement of notification shall not
12 relieve the excavator and the operator from compliance with
13 any other state or federal notification obligation. In any
14 dispute concerning the liability for damages to any
15 underground facility, the excavator shall bear the burden
16 of proof concerning its use of reasonable care in
17 conducting the excavation.

18

19 **37-12-304. Notification centers; formation; duties.**

20

21 (a) ~~Persons having underground facilities~~ All
22 operators shall join the notification center and shall
23 participate in the notification center providing for mutual
24 receipt of notification of excavation activities in a

1 specified area and pay their share of the cost for the
2 service provided.

3

4 (b) The notification center shall:

5

6 (iii) Maintain adequate records documenting
7 compliance with the requirements of this act, including the
8 following:

9

10 (C) Written records related to all
11 complaints and responses alleging noncompliance with this
12 act.

13

14 (vii) Upon request, provide to ~~persons~~
15 excavators giving notice of an intent to engage in an
16 excavation activity the names of participating operators of
17 underground facilities to whom the notice will be
18 transmitted;

19

20 (ix) Offer an excavation safety training
21 program.

22

23 **37-12-305. Exemptions.**

24

(e) Private domestic water and sewer lines located outside any incorporated area and serving ~~five (5)~~ nine (9) or fewer service hook-ups, private irrigation and drainage lines and ditches, irrigation district and drainage district lines and ditches, and private livestock water pipelines and facilities are exempt from the provisions of this act.

8

9 **Section 3.** W.S. 37-12-302(j) and (k) is repealed.

10

11 **Section 4.** This act is effective July 1, 2010.

12

13 (END)