

1 AN ACT concerning underground utilities facilities damage  
2 prevention.

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

5 Section 5. The Illinois Underground Utility Facilities  
6 Damage Prevention Act is amended by changing Sections 2, 2.2,  
7 2.3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14 and adding Sections  
8 2.6 and 2.7 as follows:

9 (220 ILCS 50/2) (from Ch. 111 2/3, par. 1602)

10 Sec. 2. Definitions. As used in this Act, unless the  
11 context clearly otherwise requires, the terms specified in  
12 Sections 2.1 through 2.7 have the meanings ascribed to  
13 them in those Sections.

14 (Source: P.A. 86-674.)

15 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

16 Sec. 2.2. Underground utility facilities "Underground  
17 utility facilities" or "facilities" means and includes wires,  
18 ducts, fiber optic cable, conduits, pipes, sewers, and cables  
19 and their connected appurtenances installed beneath the  
20 surface of the ground by a public utility (as is defined in  
21 the Illinois Public Utilities Act, as amended), or by a  
22 municipally owned or mutually owned utility providing a  
23 similar utility service, except an electric cooperative as  
24 defined in the Illinois Public Utilities Act, as amended, or  
25 by a pipeline entity transporting gases, crude oil, petroleum  
26 products, or other hydrocarbon materials within the State or  
27 by a telecommunications carrier as defined in the Universal  
28 Telephone Service Protection Law of 1985, or by a company  
29 described in Section 1 of "An Act relating to the powers,  
30 duties and property of telephone companies", approved May 16,

1 1903, as amended, or by a community antenna television  
2 system, hereinafter referred to as "CATS", as defined in the  
3 Illinois Municipal Code, as amended.

4 (Source: P.A. 86-674.)

5 (220 ILCS 50/2.3) (from Ch. 111 2/3, par. 1602.3)

6 Sec. 2.3. Excavation. "Excavation" means any operation  
7 in which earth, rock, or other material in or on the ground  
8 is moved, removed, or otherwise displaced by means of any  
9 tools, power equipment or explosives, and includes, without  
10 limitation, grading, trenching, digging, ditching, drilling,  
11 augering, boring, tunneling, scraping, cable or pipe plowing,  
12 and driving but does not include farm tillage operations or  
13 railroad right-of-way maintenance or operations or coal  
14 mining operations regulated under the Federal Surface Mining  
15 Control and Reclamation Act of 1977 or any State law or rules  
16 or regulations adopted under the federal statute, or land  
17 surveying operations as defined in the Illinois Professional  
18 Land Surveyor Act of 1989 when not using power equipment.

19 (Source: P.A. 86-674; 86-1195; 87-125.)

20 (220 ILCS 50/2.6 new)

21 Sec. 2.6. Emergency locate request. "Emergency locate  
22 request" means a locate request for any condition  
23 constituting a clear and present danger to life, health, or  
24 property, or a utility service outage, and which requires  
25 immediate repair or action.

26 (220 ILCS 50/2.7 new)

27 Sec. 2.7. Tolerance zone. "Tolerance zone" means the  
28 approximate location of underground utility facilities or  
29 CATS facilities defined as a strip of land at least 3 feet  
30 wide, but not wider than the width of the underground  
31 facility or CATS facility plus 1-1/2 feet on either side of

1 such facility. Excavation within the tolerance zone requires  
2 extra care and precaution including, but not limited to, as  
3 set forth in Section 4.

4 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

5 Sec. 4. Required activities. Every person who engages  
6 in nonemergency excavation or demolition shall:

7 (a) take reasonable action to inform himself of the  
8 location of any underground utility facilities or CATS  
9 facilities in and near the area for which such operation is  
10 to be conducted;

11 (b) plan the excavation or demolition to avoid or  
12 minimize interference with underground utility facilities or  
13 CATS facilities within the tolerance zone by utilizing such  
14 precautions that include, but are not limited to, hand  
15 excavation, vacuum excavation methods, and visually  
16 inspecting the excavation while in progress until clear of  
17 the existing marked facility in-and-near-the-construction  
18 area;

19 (c) if practical, use white paint, flags, stakes, or  
20 both, to outline the dig site;

21 (d) (e) provide notice not more than 14 days nor less  
22 than 48 hours (exclusive of Saturdays, Sundays and holidays)  
23 in advance of the start of the excavation or demolition to  
24 the owners or operators of the underground utility facilities  
25 or CATS facilities in and near the excavation or demolition  
26 area through the State-Wide One-Call Notice System or, in the  
27 case of nonemergency excavation or demolition within the  
28 boundaries of a municipality of at least one million persons  
29 which operates its own one-call notice system, through the  
30 one-call notice system which operates in that municipality;

31 (e) (d) provide, during and following excavation or  
32 demolition, such support for existing underground utility  
33 facilities or CATS facilities in and near the excavation or

1 demolition area as may be reasonably necessary for the  
2 protection of such facilities unless otherwise agreed to by  
3 the owner or operator of the underground facility or CATS  
4 facility; and

5 ~~(f)~~ ~~(e)~~ backfill all excavations in such manner and with  
6 such materials as may be reasonably necessary for the  
7 protection of existing underground utility facilities or CATS  
8 facilities in and near the excavation or demolition area.

9 At a minimum, the notice required under clause ~~(d)~~ ~~(e)~~  
10 shall provide:

11 (1) the person's name, address, and (i) phone  
12 number at which a person message can be reached and ~~left~~  
13 ~~or~~ (ii) fax number;

14 (2) the start date of the planned excavation or  
15 demolition;

16 (3) the address at which the excavation or  
17 demolition will take place; and

18 (4) the type and extent of the work involved; and-

19 (5) section/quarter sections when the above  
20 information does not allow the State-Wide One-Call Notice  
21 System to determine the appropriate geographic  
22 section/quarter sections. This item (5) does not apply  
23 to residential property owners.

24 (Source: P.A. 87-125; 88-578, effective date changed to  
25 7-1-95 by P.A. 88-681.)

26 (220 ILCS 50/5) (from Ch. 111 2/3, par. 1605)

27 Sec. 5. Notice of preconstruction conference. When the  
28 Illinois Department of Transportation notifies an owner or  
29 operator of an underground utility facility or CATS facility  
30 that the Department will conduct a preconstruction conference  
31 concerning new construction, reconstruction, or maintenance  
32 of State highways in and near the area in which such owner or  
33 operator has placed underground utility facilities, such

1 notification shall, except as otherwise provided in this  
 2 Section constitute compliance by the Department or its  
 3 contractors with paragraphs (a), (b), and (d) ~~(e)~~ of Section  
 4 4 of this Act. In instances when notification of a  
 5 preconstruction conference is provided to the owner or  
 6 operator of an underground utility facility or CATS facility  
 7 but no specific date is established at the preconstruction  
 8 conference for the new construction, reconstruction or  
 9 maintenance of State highways in and near the area in which  
 10 the owner or operator has placed underground utility  
 11 facilities or CATS facilities, then the Department or its  
 12 contractors shall later comply with paragraph (d) ~~(e)~~ of  
 13 Section 4 of this Act.

14 (Source: P.A. 86-674.)

15 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

16 Sec. 6. Emergency excavation or demolition. (a) Every  
 17 person who engages in emergency excavation or demolition  
 18 outside of the boundaries of a municipality of at least one  
 19 million persons which operates its own one-call notice system  
 20 shall take all reasonable precautions to avoid or minimize  
 21 interference between the emergency work and existing  
 22 underground utility facilities or CATS facilities in and near  
 23 the excavation or demolition area, through the State-Wide  
 24 One-Call Notice System, and shall notify, as far in advance  
 25 as possible, the owners or operators of such underground  
 26 utility facilities or CATS facilities in and near the  
 27 emergency excavation or demolition area, through the  
 28 State-Wide One-Call Notice System. At a minimum, the notice  
 29 required under this subsection (a) shall provide:

30 (1) the person's name, address, and (i) phone  
 31 number at which a person can be reached and (ii) fax  
 32 number;

33 (2) the start date of the planned emergency

1 excavation or demolition;

2 (3) the address at which the excavation or  
3 demolition will take place; and

4 (4) the type and extent of the work involved.

5 A 2-hour wait time exists after an emergency locate  
6 notification request is made through the State-Wide One-Call  
7 Notice System. If the conditions at the site dictate an  
8 earlier start than the 2-hour wait time, it is the  
9 responsibility of the excavator to demonstrate that site  
10 conditions warranted this earlier start time.

11 (b) Every person who engages in emergency excavation or  
12 demolition within the boundaries of a municipality of at  
13 least one million persons which operates its own one-call  
14 notice system shall take all reasonable precautions to avoid  
15 or minimize interference between the emergency work and  
16 existing underground utility facilities or CATS facilities in  
17 and near the excavation or demolition area, through the  
18 municipality's one-call notice system, and shall notify, as  
19 far in advance as possible, the owners and operators of  
20 underground utility facilities or CATS facilities in and near  
21 the emergency excavation or demolition area, through the  
22 municipality's one-call notice system.

23 (c) The reinstallation of traffic control devices shall  
24 be deemed an emergency for purposes of this Section.

25 (Source: P.A. 86-674; 87-125.)

26 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

27 Sec. 7. Damage or dislocation. In the event of any  
28 damage to or dislocation of any underground utility  
29 facilities or CATS facilities in connection with any  
30 excavation or demolition, emergency or nonemergency, the  
31 person responsible for the excavation or demolition  
32 operations shall immediately notify the affected utility and  
33 the State-Wide One-Call Notice System owner--of--such

1 facilities.

2 (Source: P.A. 86-674.)

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

4 Sec. 8. Liability or financial responsibility

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

9 (b) No liability for purely economic damages or losses,  
10 including but not limited to loss of profits, shall attach to  
11 any person for acts or omissions in the performance or  
12 nonperformance of the duties prescribed in this Act. The  
13 furnishing of information in a required locate request, the  
14 transmission of such information by the State-Wide One-Call  
15 Notice System, and the locating and marking, or mislocating  
16 or mismarking, of underground utility facilities or CATS  
17 facilities by any person in response to a locate request  
18 shall not give rise to any liability for purely economic  
19 damages or losses, including but not limited to loss of  
20 profits.

21 (c) Nothing in this Act shall be deemed to provide for  
22 liability or financial responsibility of the Department of  
23 Transportation, its officers and employees concerning any  
24 underground utility facility or CATS facility located on  
25 highway right-of-way by permit issued under the provisions of  
26 Section 9-113 of the Illinois Highway Code. It is not the  
27 intent of this Act to change any remedies in law regarding  
28 the duty of providing lateral support.

29 (d) Neither the State-Wide One-Call Notice System nor  
30 any of its officers, agents, or employees shall be liable for  
31 damages for injuries or death to persons or damage to  
32 property caused by acts or omissions in the receipt,  
33 recording, or transmission of locate requests or other

1 information in the performance of its duties as the  
2 State-Wide One-Call Notice System.

3 (e) In joining the State-Wide One-Call Notice System, a  
4 municipality's liability, under any membership rules and  
5 regulations, for the identification of (i) the entity that is  
6 in charge of or managing the System or any officer, agent, or  
7 employee of that entity or (ii) a member of the System or any  
8 officer, agent, or employee of a member of the System shall  
9 be limited to claims arising as a result of the acts or  
10 omissions of the municipality or its officers, agents, or  
11 employees or arising out of the operation of the operations  
12 of the municipality's underground utility facilities.

13 (f) Nothing in this Section shall be construed to create  
14 any additional liability for a municipality in relation to  
15 any member of the system with which the municipality may have  
16 entered into a franchise agreement. If a municipality's  
17 liability for indemnification under a franchise agreement is  
18 narrower than under this Section, the franchise agreement  
19 controls.

20 (g) A person owning, operating, or locating underground  
21 facilities or CATS facilities may voluntarily locate any  
22 similar facility that is privately owned and attached to the  
23 facility owner's or operator's system in the area of the  
24 proposed excavation or demolition at the request of the owner  
25 of the facility. If the locating is done at the request of  
26 the owner of the facility without charge or fee and the  
27 facility is mismarked and damaged, the person owning,  
28 operating, or locating the underground utility facilities or  
29 CATS facilities shall not be liable for any resulting injury,  
30 death, or property damage.

31 (h) Any residential property owner who fails to comply  
32 with any provision of this Act and damages underground  
33 utility facilities or CATS facilities while engaging in  
34 excavation or demolition on such residential property shall



1 not be subject to a penalty under this Act, but shall be  
2 liable for the damage caused to the owner or operator of the  
3 damaged underground utility facilities or CATS facilities.

4 (Source: P.A. 86-674; 87-125.)

5 (220 ILCS 50/9) (from Ch. 111 2/3, par. 1609)

6 Sec. 9. Negligence. When it is shown by competent  
7 evidence in any action for physical damages to underground  
8 utility facilities or CATS facilities that such damages  
9 resulted from excavation or demolition and that the person  
10 engaged in such excavation or demolition failed to comply  
11 with the provisions of this Act, that person shall be deemed  
12 prima facie guilty of negligence. When it is shown by  
13 competent evidence in any action for physical damages to  
14 persons, material or equipment brought by persons undertaking  
15 excavation or demolition acting in compliance with the  
16 provisions of this Act that such damages resulted from the  
17 failure of owners and operators of underground facilities or  
18 CATS facilities to comply with the provisions of this Act,  
19 those owners and operators shall be deemed prima facie guilty  
20 of negligence.

21 (Source: P.A. 86-674.)

22 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

23 Sec. 10. Record of notice; marking of facilities. Upon  
24 notice by the person engaged in excavation or demolition, the  
25 person owning or operating underground utility facilities or  
26 CATS facilities in or near the excavation or demolition area  
27 shall cause a written record to be made of the notice and  
28 shall mark, within 48 hours (excluding Saturdays, Sundays and  
29 holidays) of receipt of notice, the approximate locations of  
30 such facilities so as to enable the person excavating or  
31 demolishing to establish the location of the underground  
32 utility facilities or CATS facilities.

1       All persons subject to the requirements of this Act shall  
2 plan and conduct their work consistent with reasonable  
3 business practices. Conditions may exist making it  
4 unreasonable to request that locations be marked within 48  
5 hours. It is unreasonable to request owners and operators of  
6 underground utility facilities and CATS facilities to locate  
7 all of their facilities in an affected area upon short notice  
8 in advance of a large or extensive nonemergency project, or  
9 to request extensive locates in excess of a reasonable  
10 excavation or demolition work schedule, or to request locates  
11 under conditions where a repeat request is likely to be made  
12 because of the passage of time or adverse job conditions.  
13 Owners and operators of underground utility facilities and  
14 CATS facilities must reasonably anticipate seasonal  
15 fluctuations in the number of locate requests and staff  
16 accordingly. Marking--need--not--be--accomplished--more--than--48  
17 hours--in--advance--of--the--time--excavation--or--demolition--of  
18 daily--segments--of--the--excavation--or--demolition--are--scheduled  
19 to--begin.

20       If a person owning or operating underground utility  
21 facilities or CATS facilities receives a notice under this  
22 Section but does not own or operate any underground utility  
23 facilities or CATS facilities within the proposed excavation  
24 or demolition area described in the notice, that person,  
25 within 48 hours (excluding Saturdays, Sundays, and holidays)  
26 after receipt of the notice, shall so notify the person  
27 engaged in excavation or demolition who initiated the notice,  
28 unless the person who initiated the notice expressly waives  
29 the right to be notified that no facilities are located  
30 within the excavation or demolition area. The notification  
31 by the owner or operator of underground utility facilities or  
32 CATS facilities to the person engaged in excavation or  
33 demolition may be provided in any reasonable manner  
34 including, but not limited to, notification in any one of the

1 following ways: by face-to-face communication; by phone or  
2 phone message; by facsimile; by posting in the excavation or  
3 demolition area; or by marking the excavation or demolition  
4 area. The owner or operator of those facilities has  
5 discharged the owner's or operator's obligation to provide  
6 notice under this Section if the owner or operator attempts  
7 to provide notice by telephone or by facsimile, if the person  
8 has supplied a facsimile number, but is unable to do so  
9 because the person engaged in the excavation or demolition  
10 does not answer his or her telephone or does not have an  
11 answering machine or answering service to receive the  
12 telephone call or does not have a facsimile machine in  
13 operation to receive the facsimile transmission. If the  
14 owner or operator attempts to provide notice by telephone or  
15 by facsimile but receives a busy signal, that attempt shall  
16 not serve to discharge the owner or operator of the  
17 obligation to provide notice under this Section.

18 A person engaged in excavation or demolition may  
19 expressly waive the right to notification from the owner or  
20 operator of underground utility facilities or CATS facilities  
21 that the owner or operator has no facilities located in the  
22 proposed excavation or demolition area. Waiver of notice is  
23 only permissible in the case of regular or non-emergency  
24 locate requests. The waiver must be made at the time of the  
25 notice to the State-Wide One-Call Notice System. A waiver  
26 made under this Section is not admissible as evidence in any  
27 criminal or civil action that may arise out of, or is in any  
28 way related to, the excavation or demolition that is the  
29 subject of the waiver.

30 For the purposes of this Act, underground facility  
31 operators may utilize a combination of flags, stakes, and  
32 paint when possible on non-paved surfaces and when dig site  
33 and seasonal conditions warrant the-"approximate-location"-of  
34 underground--utility-facilities-or-CATS-facilities-is-defined

1 as-a-strip-of-land-at-least-3-feet-wide-but--not--wider--than  
 2 the-width-of-the-underground-facility-or-CATS-facility-plus-1  
 3 1/2-feet-on-either-side-of-such-facility. If the approximate  
 4 location of an underground utility facility or CATS facility  
 5 is marked with stakes or other physical means, the following  
 6 color coding shall be employed:

7 Utility or Community Antenna	8 Identification Color
9 Television Systems and Type	
of Product	

- 10 Electric Power, Distribution and
- 11 Transmission..... Safety Red
- 12 Municipal Electric Systems..... Safety Red
- 13 Gas Distribution and Transmission..... High Visibility
- 14 Safety Yellow
- 15 Oil Distribution and Transmission..... High Visibility
- 16 Safety Yellow
- 17 Telephone and Telegraph Systems..... Safety Alert Orange
- 18 Community Antenna Television Systems.. Safety Alert Orange
- 19 Water Systems..... Safety
- 20 Precaution Blue
- 21 Sewer Systems..... Safety Green
- 22 Non-potable Water and Slurry Lines..... Safety Purple
- 23 Temporary Survey..... Safety Pink
- 24 Proposed Excavation..... Safety White

25 (Source: P.A. 86-674; 88-578 (effective date changed to  
 26 7-1-95 by P.A. 88-681); 88-681, eff. 7-1-95.)

27 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

28 Sec. 11. Penalties; liability; fund.

29 (a) Every person who, while engaging in excavation or  
 30 demolition, wilfully fails to comply with the Act by failing  
 31 to provide the notice to the owners or operators of the  
 32 underground facilities or CATS facility near the excavation  
 33 or demolition area through the State-Wide One-Call Notice

1 System as required by Section 4 of this Act and ~~damages any~~  
 2 ~~underground-utility-facilities-or-CATS-facilities,~~ shall be  
 3 subject to a penalty fine of up to \$5,000 ~~no more than \$200~~  
 4 for each separate offense and shall be liable for the damage  
 5 caused to the owners or operators of the facility.

6 (b) Every person who, while engaging in excavation or  
 7 demolition, and has provided the notice to the owners or  
 8 operators of the underground utility facilities or CATS  
 9 facilities in and near the excavation or demolition area  
 10 through the State-Wide One-Call Notice System as required by  
 11 Section 4 of this Act, but otherwise wilfully fails to comply  
 12 with this Act and ~~damages any underground-utility--facilities~~  
 13 ~~or--CATS-facilities,~~ shall be subject to a penalty fine of up  
 14 to \$2,500 ~~no more than \$100~~ for each separate offense and  
 15 shall be liable for the damage caused to the owners or  
 16 operators of the facility.

17 (c) Every person who, while engaging in excavation or  
 18 demolition, and has provided the notice to the owners or  
 19 operators of the underground utility facilities or CATS  
 20 facilities in and near the excavation or demolition area  
 21 through the State-Wide One-Call Notice System as required by  
 22 Section 4 of this Act, but otherwise, while acting  
 23 reasonably, damages any underground utility facilities or  
 24 CATS facilities, shall not be subject to a penalty, fine but  
 25 shall be liable for the damage caused to the owners or  
 26 operators of the facility provided the underground utility  
 27 facility or CATS facility is properly marked as provided in  
 28 Section 10 of this Act.

29 (d) Every person who, while engaging in excavation or  
 30 demolition, provides notice to the owners or operators of the  
 31 underground utility facilities or CATS facilities through the  
 32 State-Wide One-Call Notice System as an emergency locate  
 33 request and the locate request is not an emergency locate  
 34 request as defined in Section 2.6 of this Act shall be

1 subject to a penalty up to \$2,500 for each separate offense.

2 (e) Owners and operators of underground utility  
3 facilities or CATS ~~community--antenna--television--systems~~  
4 facilities who wilfully fail to comply with this Act by a  
5 failure to mark ~~or--to--properly--mark~~ the location of an  
6 underground utility or CATS facility shall be subject to a  
7 penalty fine of up to \$5,000 ~~no-more-than-\$200~~ for each  
8 separate offense ~~each-violation~~ resulting from the failure to  
9 mark ~~or-properly-mark~~ an underground utility facility or CATS  
10 facility. ~~No-person-shall-be-subject-to--such--fine--if--the~~  
11 ~~owner-or-operator-of-the-underground-utility-facilities-erred~~  
12 ~~in--marking--or-failed-to-mark-such-facilities-as-provided-in~~  
13 ~~Section-10-of--this--Act--and--no--willful--damage--has--been~~  
14 ~~committed.~~

15 (f) As provided in Section 3 of this Act, all owners or  
16 operators of underground utility facilities or CATS  
17 facilities who fail to join the State-Wide One-Call Notice  
18 System by January 1, 2003 shall be subject to a penalty of  
19 \$100 per day for each separate offense. Every day an owner or  
20 operator falls to join the State-Wide One-Call Notice System  
21 is a separate offense. This subsection (f) does not apply to  
22 utilities operating facilities or CATS facilities exclusively  
23 within the boundaries of a municipality with a population of  
24 at least 1,000,000 persons.

25 (g) No owner or operator of underground utility  
26 facilities or community antenna television systems facilities  
27 shall be subject to a penalty fine where a delay in marking  
28 or a failure to mark or properly mark the location of an  
29 underground utility or CATS facility is caused by conditions  
30 beyond the reasonable control of such owner or operator.

31 (h) Any person who is not an agent, employee, or  
32 authorized locating contractor of the owner or operator of  
33 the underground utility facility or CATS facility who  
34 removes, alters, or otherwise damages markings, flags, or

1 stakes used to mark the location of an underground utility or  
 2 CATS facility other than during the course of the excavation  
 3 for which the markings were made or before completion of the  
 4 project shall be subject to a penalty up to \$1,000 for each  
 5 separate offense.

6 (i) The excavator shall exercise due care at all times  
 7 to protect underground utility facilities and CATS  
 8 facilities. If, after proper notification through the  
 9 State-Wide One-Call Notice System and upon arrival at the  
 10 site of a proposed excavation, the excavator observes clear  
 11 evidence of the presence of an unmarked utility or CATS  
 12 facility in the area of the proposed excavation, the  
 13 excavator shall not begin excavating until 2 hours after an  
 14 additional call is made to the State-Wide One-Call Notice  
 15 System for the area. The operator of the utility or CATS  
 16 facility shall respond within 2 hours of the excavator's call  
 17 to the State-Wide One-Call Notice System.

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

- 26 (1) gravity of non compliance;
- 27 (2) culpability of offender;
- 28 (3) history of non compliance;
- 29 (4) ability to pay penalty;
- 30 (5) show of good faith of offender;
- 31 (6) ability to continue business; and
- 32 (7) other special circumstances.

33 In-the-event-that-a-person-has-given-proper--notice,--the  
 34 owner-or-operator-of-the-underground-utility-facility-or-CATS

1 facility--has-marked-the-approximate-location-and-that-person  
2 is--unable--to--physically--locate--the--underground--utility  
3 facility-or-CATS-facility,--where-other--than--an--"open--cut"  
4 method-of-locating-must-be-used,--within-a-reasonable-time-due  
5 to-conditions-beyond-his-control-and-that-person-has-notified  
6 the--State-Wide--One-Call--notice--system--of--the--owner--or  
7 operator-of-the-underground-utility-facility-or-CATS-facility  
8 of--the--need--for--additional--and--more-precise-markings-of  
9 approximate-locations-and--the--owner--or--operator--has--not  
10 further--and-more-precisely-marked-or-located-the-underground  
11 utility--facility--or--CATS--facility--within--48--hours---of  
12 receiving---such---notice,--then--the--person--excavating--or  
13 demolishing,--exercising-reasonable-care,--shall-not-be--liable  
14 for--damages--to--the--facilities.---Actions--to--recover-the  
15 penalty-provided-for-in-this-Section-shall-be-brought-by--the  
16 State's--Attorney-of-the-county-where-the-damage-occurred,--at  
17 the-request-of-the--owner--or--operator--of--the--underground  
18 utility--facilities--or--CATS--facilities--damaged,--or-at-the  
19 request-of-any-person-when-the-owner--or--operator--fails--to  
20 comply--with--this--Act,--or--at--the-request-of-the-Illinois  
21 Commerce-Commission-in-the-name-of-the-People-of-the-State-of  
22 Illinois,--in-the-circuit-court-for-that-county,--or--for--the  
23 county--in--which--the-person-complained-of-has-its-principal  
24 place-of-business-or-resides.

25 (k) There is hereby created in the State treasury a  
26 special fund to be known as the Illinois Underground Utility  
27 Facilities Damage Prevention Fund. All penalties recovered  
28 in any action under this Section shall be paid into the Fund  
29 and shall be distributed annually as a grant to the  
30 State-Wide One-Call Notice System to be used in safety and  
31 informational programs to reduce the number of incidents of  
32 damage to underground utility facilities and CATS facilities  
33 in Illinois. The distribution shall be made during January  
34 of each calendar year based on the balance in the Illinois



1 Underground Utility Facilities Damage Prevention Fund as of  
2 December 31 of the previous calendar year. In all such  
3 actions under this Section, the procedure and rules of  
4 evidence shall conform with the Code of Civil Procedure, and  
5 with rules of courts governing civil trials.

6 (l) The Illinois Commerce Commission shall establish an  
7 Advisory Committee consisting of a representative from each  
8 of the following: utility operator, JULIE, excavator,  
9 municipality, and the general public. The Advisory Committee  
10 shall serve as a peer review panel for any contested  
11 penalties resulting from the enforcement of this Act.

12 The members of the Advisory Committee shall be immune,  
13 individually and jointly, from civil liability for any act or  
14 omission done or made in performance of their duties while  
15 serving as members of such Advisory Committee, but only in  
16 the absence of willful misconduct.

17 (m) Any final order or decision of the Advisory  
18 Committee may be reviewed as provided in the Administrative  
19 Review Law and the rules adopted pursuant thereto.

20 ~~Any--residential-property-owner-that-fails-to-comply-with~~  
21 ~~any-provision-of-this-Act--and--damages--underground--utility~~  
22 ~~facilities-or-CATS-facilities-while-engaging-in-excavation-or~~  
23 ~~demolition--on--land--owned-by-the-residential-property-owner~~  
24 ~~shall-not-be-subject-to-a-fine-but-shall-be--liable--for--the~~  
25 ~~damage--caused--to--the--owner-or-operator-of-the-underground~~  
26 ~~utility-facilities-or-CATS-facilities.~~

27 (Source: P.A. 86-674.)

28 (220 ILCS 50/13) (from Ch. 111 2/3, par. 1613)  
29 Sec. 13. Mandamus or injunction. Where public safety or  
30 the preservation of uninterrupted, necessary utility service  
31 or community antenna television system service is endangered  
32 by any person engaging in excavation or demolition in a  
33 negligent or unsafe manner which has resulted in or is likely

1 to result in damage to underground utility facilities or CATS  
2 facilities, or is proposing to use procedures for excavation  
3 or demolition which are likely to result in damage to  
4 underground utility facilities or CATS facilities, or where  
5 the owner or operator of underground utility facilities or  
6 CATS facilities endangers an excavator by willfully failing  
7 to respond to a locate request, the owner or operator of such  
8 facilities or the excavator or the State's Attorney or the  
9 Illinois Commerce Commission at the request of the owner or  
10 operator of such facilities or the excavator may commence an  
11 action, ~~or the State's Attorney, at the request of the owner~~  
12 ~~or operator of such facilities or the Illinois Commerce~~  
13 ~~Commission, shall commence an action,~~ in the circuit court  
14 for the county in which the excavation or demolition is  
15 occurring or is to occur, or in which the person complained  
16 of has his principal place of business or resides, for the  
17 purpose of having such negligent or unsafe excavation or  
18 demolition stopped and prevented or to compel the marking of  
19 underground utilities facilities or CATS facilities, either  
20 by mandamus or injunction.

21 (Source: P.A. 86-674.)

22 (220 ILCS 50/14) (from Ch. 111 2/3, par. 1614)  
23 Sec. 14. Home rule. The regulation of underground  
24 utility facilities and CATS facilities damage prevention, as  
25 provided for in this Act, is an exclusive power and function  
26 of the State. A home rule unit may not regulate underground  
27 utility facilities and CATS facilities damage prevention, as  
28 provided for in this Act. All units of local government,  
29 including home rule units, must comply with the provisions of  
30 this Act. This Section is a denial and limitation of home  
31 rule powers and functions under subsection (h) of Section 6  
32 of Article VII of the Illinois Constitution.

33 (Source: P.A. 86-674.)

1 (220 ILCS 50/11.5 rep.)

2 Section 10. The Illinois Underground Utility facilities  
3 Damage Prevention Act is amended by repealing Section 11.5.

4 Section 99. Effective date. This Act takes effect  
5 January 1, 2002.