

**MISS DIG UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT
(EXCERPT)
Act 174 of 2013**

***** 460.731.new THIS NEW SECTION IS EFFECTIVE APRIL 1, 2014 *****

460.731.new Prohibited conduct; violations as misdemeanor; penalty; civil fine; use of commission determination in court action or proceeding; instruction forms; rules; incident reports; maintenance and availability of information.

Sec. 11. (1) A person who engages in any of the following conduct is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both:

(a) Knowingly damages an underground facility and fails to promptly notify the facility owner or facility operator.

(b) Knowingly damages an underground facility and backfills the excavation or otherwise acts to conceal the damage.

(c) Willfully removes or otherwise destroys stakes or other physical markings used to mark the approximate location of underground facilities unless that removal or destruction occurs after the excavation or blasting is completed or as an expected consequence of the excavation or blasting activity.

(2) Upon complaint filed with the commission or upon the commission's own motion, following notice and hearing, a person, other than a governmental agency, who violates any of the provisions of this act may be ordered to pay a civil fine of not more than \$5,000.00 for each violation. In addition to or as an alternative to any fine, the commission may require the person to obtain reasonable training to assure future compliance with this act. Before filing a complaint under this subsection, a person shall attempt to settle the dispute with the adverse party or parties using any reasonable means of attempted resolution acceptable to the involved parties. In determining the amount of any fine, the commission shall consider all of the following:

(a) The ability of the person charged to pay or continue in business.

(b) The nature, circumstances, and gravity of the violation.

(c) Good-faith efforts by the person charged to comply with this act.

(d) The degree of culpability of the person charged and of the complainant.

(e) The history of prior violations of the person charged.

(3) A commission determination under subsection (2) shall not be used against a party in any action or proceeding before any court. A complaint filed under subsection (2) does not limit a person's right to bring a civil action to recover damages that person incurred arising out of a violation of the requirements of this act.

(4) The commission shall develop forms with instructions and may promulgate administrative rules for processing complaints under this act, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) Not later than October 1, 2014, the commission shall establish requirements for reporting incidents involving damage to underground facilities.

(6) Beginning April 1, 2015, the commission shall maintain information on damaged facilities reported under subsection (5), including, but not limited to, any damage that occurs during excavation, digging, or blasting that is excluded from the definition of excavation under section 3(m). The commission shall make any information maintained under this subsection publicly available on its website.

History: 2013, Act 174, Eff. Apr. 1, 2014.