

CHAPTER 38

LABOR AND INDUSTRY

HOUSE BILL 09-1092

BY REPRESENTATIVE(S) Peniston, Gagliardi, Fischer, McGihon, Middleton, Primavera, Ryden, Scanlan, Vigil;
also SENATOR(S) Kester, Williams.

AN ACT**CONCERNING THE RISK OF DAMAGE TO UNDERGROUND FACILITIES CAUSED BY EXCAVATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 9-1.5-102 (2) and (3), Colorado Revised Statutes, are amended, and the said 9-1.5-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

9-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Emergency situations" includes ruptures and leakage of pipelines, explosions, fires, and similar instances where immediate action is necessary to prevent loss of life or significant damage to PROPERTY, INCLUDING, WITHOUT LIMITATION, underground facilities, and advance notice of proposed excavation is impracticable under the circumstances.

(3) "Excavation" means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes augering, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling. "EXCAVATION" SHALL NOT INCLUDE ROUTINE MAINTENANCE ON EXISTING PLANTED LANDSCAPES.

(6.5) "ROUTINE MAINTENANCE" MEANS A REGULAR ACTIVITY THAT HAPPENS AT LEAST ONCE PER YEAR ON AN EXISTING PLANTED LANDSCAPE IF EARTH IS NOT DISTURBED AT A DEPTH OF MORE THAN TWELVE INCHES BY NONMECHANICAL MEANS OR FOUR INCHES BY MECHANICAL MEANS AND IF THE ACTIVITIES ARE NOT INTENDED TO PERMANENTLY LESSEN THE GROUND COVER OR LOWER THE EXISTING GROUND CONTOURS. MECHANICAL EQUIPMENT USED FOR ROUTINE MAINTENANCE TASKS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SHALL BE DEFINED AS AERATORS, HAND-HELD ROTOTILLERS, SOIL INJECTION NEEDLES, LAWN EDGERS, OVERSEEDERS, AND HAND TOOLS.

SECTION 2. 9-1.5-103 (4) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators. (4) (c) (III) IF A PERSON PERFORMING ROUTINE MAINTENANCE DISCOVERS AN UNDERGROUND FACILITY IN THE AREA WHERE THE ROUTINE MAINTENANCE IS BEING PERFORMED, THE PERSON SHALL NOTIFY THE NOTIFICATION ASSOCIATION AND THE AFFECTED OWNER OR OPERATOR AS QUICKLY AS PRACTICABLE AND REQUEST AN IMMEDIATE VERIFICATION OF THE LOCATION OF ANY UNDERGROUND FACILITY. UPON RECEIVING NOTIFICATION, THE AFFECTED OWNER OR OPERATOR SHALL RESPOND AS QUICKLY AS PRACTICABLE. THE PERSON SHALL CEASE ROUTINE MAINTENANCE ACTIVITIES IN THE IMMEDIATE AREA, AS DETERMINED BY EXERCISING DUE CAUTION AND CARE, UNTIL THE LOCATION OF ANY UNDERGROUND FACILITIES HAS BEEN VERIFIED.

SECTION 3. 9-1.5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators. (8) A PERSON WHO PERFORMS MAINTENANCE SHALL TAKE REASONABLE CARE WHEN DISTURBING THE SOIL.

SECTION 4. The introductory portion to 9-1.5-104.5 (2) (d), Colorado Revised Statutes, is amended to read:

9-1.5-104.5. Civil penalties - applicability. (2) (d) If any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, fails to comply with paragraph (a) of this subsection (2) or fails to exercise reasonable care in excavating OR PERFORMING ROUTINE MAINTENANCE and damages an underground facility during ~~an~~ SUCH excavation OR ROUTINE MAINTENANCE, such person shall be presumably liable for:

SECTION 5. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 4, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to excavations and routine maintenance commenced on or after the applicable effective date of this act.

Approved: March 20, 2009

Editor's note: The August 4 date specified in the effective date section of this act reflects the ninetieth day, therefore the act takes effect at 12:01 a.m. on August 5, 2009.