

AN ACT

relating to fees, penalties, and training courses relating to notification of underground excavation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 251.106, Utilities Code, is amended to read as follows:

Sec. 251.106. PAYMENTS TO CORPORATION. Each time a notification center receives a call from an excavator under Section 251.151, the notification center shall pay the corporation five cents [~~one cent~~]. The corporation shall waive this charge for the remainder of any year in which the corporation receives \$250,000 [~~\$500,000~~] under this section.

SECTION 2. Section 251.201, Utilities Code, is amended to read as follows:

Sec. 251.201. CIVIL PENALTY OR WARNING LETTER. (a) An excavator that violates Section 251.151, 251.152, or 251.159 is liable for a civil penalty of not less than \$500 [~~\$50~~] or more than \$1,000 [~~\$100~~]. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.

(b) If it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$1,000 [~~\$100~~] or more than \$2,000 [~~\$200~~].

(c) If it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than \$2,000 [~~\$200~~] or more than \$5,000 [~~\$500~~].

(d) In assessing the civil penalty the court shall consider the actual damage to the facility, the effect of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(e) Venue for a proceeding to collect a civil penalty under this section is in the county in which:

- (1) all or part of the alleged violation occurred;
- (2) the defendant has its principal place of business in this state; or
- (3) the defendant resides, if in this state.

(f) The appropriate county attorney or criminal district attorney shall bring the action to recover the civil penalty.

(g) This section does not apply to a residential property owner excavating on the property owner's own residential lot.

SECTION 3. Subchapter E, Chapter 251, Utilities Code, is amended by adding Section 251.2011 to read as follows:

Sec. 251.2011. WARNING LETTER AND SAFETY TRAINING COURSE. (a) The board of directors of the corporation shall establish a procedure to ensure that the board verifies that an excavator has violated Section 251.151, 251.152, or 251.159 before giving the excavator a warning letter and requiring the excavator to attend a safety training course under Section 251.201.

(b) The board shall solicit and consider advice and recommendations from excavators in establishing or approving a safety training course that an excavator may be required to attend under Section 251.201.

SECTION 4. This Act takes effect September 1, 2001, and applies to a violation that occurs on or after that date. A violation that occurs before that date is governed by the law in effect when the violation occurred, and that law is continued in effect for that purpose.

President of the Senate

Speaker of the House

I certify that H.B. No. 2391 was passed by the House on April 26, 2001, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2391 was passed by the Senate on May 22, 2001, by the following vote: Yeas 30, Nays 0, 1 present, not voting.

Secretary of the Senate

APPROVED:

Date

Governor