

MISS DIG Underground Facility Damage Prevention and Safety Act

Introduction

MISS DIG is an underground utility safety notification system that alerts owners of facilities and marks underground facilities when there is an excavation project. In 2012, the Legislature was approached by utility companies with complaints about individuals and governmental entities failing to call MISS DIG when excavating. In the past, governmental entities have been immune from damages caused by striking facilities during excavation. Legislation was introduced that would have removed all governmental immunity for damages to utility facilities while excavating. The League vociferously opposed that legislation, and ultimately it did not pass. The legislation was reintroduced in 2013, and despite concerns about ceding governmental immunity, it moved forward and became Public Acts 173 and 174 of 2013.

Local units of government have been required by statute to notify MISS DIG for a number of years, but there was no penalty for not doing so. This new law prescribes penalties for violating the Act.

It is critical that local units of government call MISS DIG and comply with the requirements to avoid potential fines.

Key provisions of the new Act

The legislation requires excavators to provide dig notice to MISS DIG at least 72 hours, but not more than 14 calendar days, before starting any excavation or blasting. Excavator is defined as any person performing excavation or blasting. The notice shall include: contact information for the excavator; a description of the area proposed to be excavated; the specific type of work; and a start date and time. Once MISS DIG issues a ticket (communication to the facility owner requesting excavation), it is good for 21 days.

The legislation further requires an excavator to:

- Expose marked facilities in the caution zone by soft excavation. “Caution zone” is defined as the area within 48 inches of either side of the facility marked provided by a facility owner. “Soft excavation” is defined as the method designed to prevent contact damages to facilities including hand-digging, cautious digging, etc.
- Provide support or bracing of facilities if necessary for their protection.
- Provide notification to MISS DIG if facility markings are destroyed or covered by excavation or if a ticket expires before excavation begins.
- Notify MISS DIG if the location of a facility cannot be determined.
- Provide notice to MISS DIG if the presence of an unmarked facility is suspected.
- Provide notice to MISS DIG if the excavator damages a facility.
- Provide notice to MISS DIG if excavation in an emergency.

This legislation does not prohibit a local unit of government from making an emergency excavation. If there is an emergency, excavation may be performed to address the conditions of the emergency.

The statute requires MISS DIG to publicize and education the public, including governmental entities, on MISS DIG. It further requires the MISS DIG system to maintain adequate records of its notification activity for six years following the notice.

The statute does not limit the right of an excavator or facility owner to seek legal relief in a civil action arising out of the statute. The Act doesn't eliminate the requirement that an excavator seek a permit from a local unit of government when required.

A facility owner may file a complaint with the Michigan Public Service Commission (MPSC) against a governmental agency for damages under a violation of this Act. The MPSC will hold a hearing on the complaint. No penalties apply if the Act was violated as a result of an emergency.

The potential penalties for local units of government are as follows:

- For a first violation, a civil fine of not more than \$5,000.
- For a second violation in 12 months, a civil fine of not more than \$10,000 and the governmental entity is required to provide training to its personnel engaged in excavating.
- For a third violation in 12 months, a civil fine of not more than \$15,000. In addition, if the violation caused damage to the facilities, the governmental agency must pay for the cost of repairing the facilities.