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Chapter No. 427  
10/HR40/R1706SG  
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***HOUSE BILL NO. 1198***

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1198

AN ACT TO AMEND SECTION 77-13-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT WHENEVER THE TERM "MISSISSIPPI ONE-CALL SYSTEM, INC." APPEARS IN THE CHAPTER REGULATING EXCAVATIONS, THE TERM SHALL MEAN "MISSISSIPPI 811, INC."; TO AMEND SECTION 77-13-9, MISSISSIPPI CODE OF 1972, TO REVISE THE METHOD OF MARKING THE LOCATION OF UNDERGROUND UTILITY LINES OR UNDERGROUND FACILITIES UPON RECEIVING ADVANCE NOTICE OF AN EXCAVATION; TO PROVIDE THAT ANY OPERATOR WHO SUFFERS DAMAGES AS A RESULT OF NOT PARTICIPATING AS A MEMBER OF MISSISSIPPI 811, INC., WAIVES THE RIGHT TO RECOVER DAMAGES FROM AN EXCAVATOR THAT COMPLIED WITH THIS CHAPTER; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 77-13-3, Mississippi Code of 1972, is amended as follows:

77-13-3. The words defined in this section shall have the following meanings when found in this chapter:

(a) "Excavate or excavation" shall mean any operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced by any means, except: (i) the tilling of the soil less than twenty-four (24) inches in depth for agricultural purposes; or (ii) an operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced to a depth of less than twelve (12) inches on private property by the property owner without the use of mechanical excavating equipment; or (iii) an operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced without the use of mechanical excavating equipment to a depth of less than twelve (12) inches on private property by an excavator who is not the property owner, except when such excavation is in a

clearly marked underground facility right-of-way. The term "excavate" shall include, but not be limited to, the operations of demolition, blasting, grading, land leveling, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, jacking, wrecking, razing, rending, moving or removing any structure or other material or mass of material on or below the ground.

(b) "Utility" shall mean any person who supplies, distributes or transports by means of underground utility lines or underground facilities any of the following materials or services: gas, mixture of gases, petroleum, petroleum products or hazardous, toxic, flammable or corrosive liquids, electricity, telecommunications (including fiber optics), sewage, drainage, water, steam or other substances.

(c) "Underground utility lines" shall mean underground or buried cable, conduit pipes and related facilities for transportation and delivery of electricity, telecommunications (including fiber optics), water, sewage, gas, mixtures of gases, petroleum, petroleum products or hazardous, flammable, toxic or corrosive liquids.

(d) "Underground facility" shall mean any underground utility lines and other items which shall be buried or placed below ground or submerged for use in connection with underground utility lines and including, but not be limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, vaults, attachments and those portions of poles below the ground.

(e) "Person" shall mean any individual, firm, partnership, association, trustee, receiver, assignee, corporation, entity, limited liability company, utility, joint venture, municipality, state governmental unit, subdivision or instrumentality of the state, or any legal representative thereof.

(f) "Damage" shall mean the substantial weakening of structural or lateral support of underground utility lines and

underground facilities, penetration or destruction of any protective coating, housing or other protective devices of an underground utility line or underground facility, and the partial or complete severance of any underground utility line or underground facility, but does not include any operator's abandoned facility.

(g) "Operator" shall mean any person who owns or operates a utility. However, the term "operator" shall not include any railroad or the Mississippi Department of Transportation.

(h) "Working day" shall mean a twenty-four-hour period commencing from the time of receipt by Mississippi 811, Inc., of the notification in accordance with this chapter, excluding Saturdays, Sundays and legal holidays.

(i) "Mechanical excavating equipment" shall mean all equipment powered by any motor, engine, or hydraulic or pneumatic device used for excavating and shall include, but not be limited to, trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows and other plowing-in or pulling-in equipment.

(j) "Excavator" shall mean any person who engages directly in excavation.

(k) "Mark" shall mean the use of stakes, paint or other clearly identifiable materials to show the field location of underground facilities in accordance with the current color code standard of the American Public Works Association, or the uncovering or exposing of underground facilities so that the excavator may readily see the location of same, or the pointing out to the excavator of certain aboveground facilities such as, but not limited to, manhole covers, valve boxes and pipe and cable risers, which indicate the location of underground facilities.

(l) "Mississippi One-Call System, Inc.," shall mean "Mississippi 811, Inc." Whenever the term "Mississippi One-Call

System, Inc.," appears in this chapter, the term shall mean  
"Mississippi 811, Inc."

(m) "Mississippi 811, Inc.," shall mean a nonprofit corporation organized under the laws of the State of Mississippi that provides a service through which a person can notify the operator(s) of underground facilities of plans to excavate and request marking of facilities.

(n) "Abandoned facility" shall mean any underground utility line or underground utility facilities no longer used in the conduct of the owner/operator's business and are not intended to be used in the future.

(o) "Emergency excavation" shall mean excavation at times of emergency involving danger to life, health or property or a customer service outage.

(p) "Approximate location" of underground utility lines or underground facilities shall mean information about an operator's underground utility lines or underground facilities which is provided to a person by an operator and must be accurate within eighteen (18) inches measured horizontally from the outside edge of each side of such operator's facility, or a strip of land eighteen (18) inches either side of the operator's field mark, or the marked width of the facility or line plus eighteen (18) inches on each side of the marked width of the facility or line.

(q) "Positive response information system" or "PRIS" means an automated information system operated and maintained by Mississippi 811, Inc., that allows excavators, locators, facility owners or operators, and other affected parties to enter and/or determine the status of a locate request.

**SECTION 2.** Section 77-13-9, Mississippi Code of 1972, is amended as follows:

77-13-9. (1) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of excavation, in accordance

with Section 77-13-7, make an investigation, and may report through the use of the PRIS the status of the work performed, within two (2) working days from the time notice is provided in accordance with this chapter to the Mississippi 811, Inc., to determine the approximate location of its underground utility lines or underground facilities in the area of the proposed excavation, and shall either: (a) mark the approximate location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to locate the lines and facilities in advance of and during the excavation work; \* \* \* (b) advise in writing or by telephone or electronic means that it has no underground utility lines or underground facilities in the excavation area; or (c) advise in writing or by telephone or electronic means that it can locate its underground utility lines or underground facilities in the excavation area only by excavation. If an operator can locate its underground utility lines or underground facilities in the excavation area only by excavation and has given proper notice of such, that operator shall be allowed a reasonable amount of additional time, not to exceed two (2) additional working days, to mark the approximate location of the underground utility lines or underground facilities.

(2) In lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, so long as the operator complies within two (2) working days of the receipt of the notice.

(3) When an excavator, upon arriving at an excavation site, sees evidence of unmarked underground utility lines or underground facilities or encounters an unmarked underground utility line or underground facility on an excavation site after excavation has commenced where notice of intent has been made in accordance with the provisions of this chapter, that excavator must immediately contact Mississippi 811, Inc. All operator(s) thus notified must

contact the excavator within four (4) hours and inform the excavator of any of their known underground facilities, active or abandoned, at the site of the excavation.

(4) When marking the approximate location of the facilities, the operator shall follow the color code designated and described herein, unless otherwise provided for by specific administrative rule or regulation promulgated pursuant to this chapter, namely:

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Electric	Safety Red
Petroleum Product/Hazardous/ Flammable/Corrosive/Toxic Materials, Product and Steam Lines, Gas or Gaseous Material	High Visibility Safety Yellow
Telecommunications (including fiber optic) and CATV	Safety Alert Orange
Potable Water	Safety Precaution Blue
Reclaimed Water, Irrigation, Slurry Lines	Purple
Sewer and Drain Lines	Safety Green
Temporary Survey Markings	High Visibility Pink
Proposed Excavation	White

(5) All utility facilities installed by owners or operators of utilities on or after January 1, 2010, shall be installed in such manner that the utility facility may be located by using a generally accepted electronic locating method.

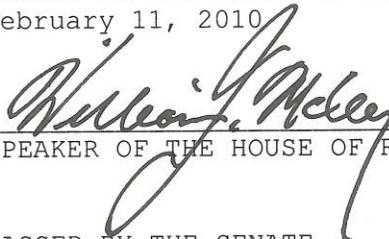
(6) Except for emergency excavations, if, before the expiration of the two (2) working days waiting period, all identified facility owners or operators have responded to the locate request and all have indicated that their facilities are either not in conflict or have been marked as indicated through the use of the PRIS, then the person planning to perform excavation or blasting shall be authorized to commence work,

subject to the other requirements of this section, without waiting the full two (2) working days.

**SECTION 3.** Any operator who suffers damages as a result of not participating as a member of Mississippi 811, Inc., waives the right to recover damages to the operator's underground facilities from the excavator if the excavator complied with the provisions of this chapter. The provisions of this section shall not apply to any municipality, as defined in Section 17-1-1, that owns or operates a utility.

**SECTION 4.** This act shall take effect and be in force from and after its passage.

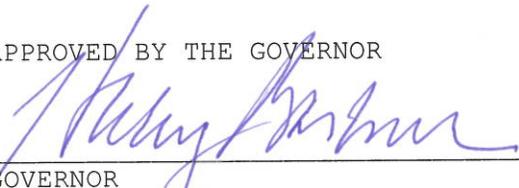
PASSED BY THE HOUSE OF REPRESENTATIVES  
February 11, 2010

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 3, 2010

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR

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