

Alabama Underground Damage Prevention Legislation Update

ACCA-December 2019



Senate Bill 315

Signed into Law on June 6, 2019

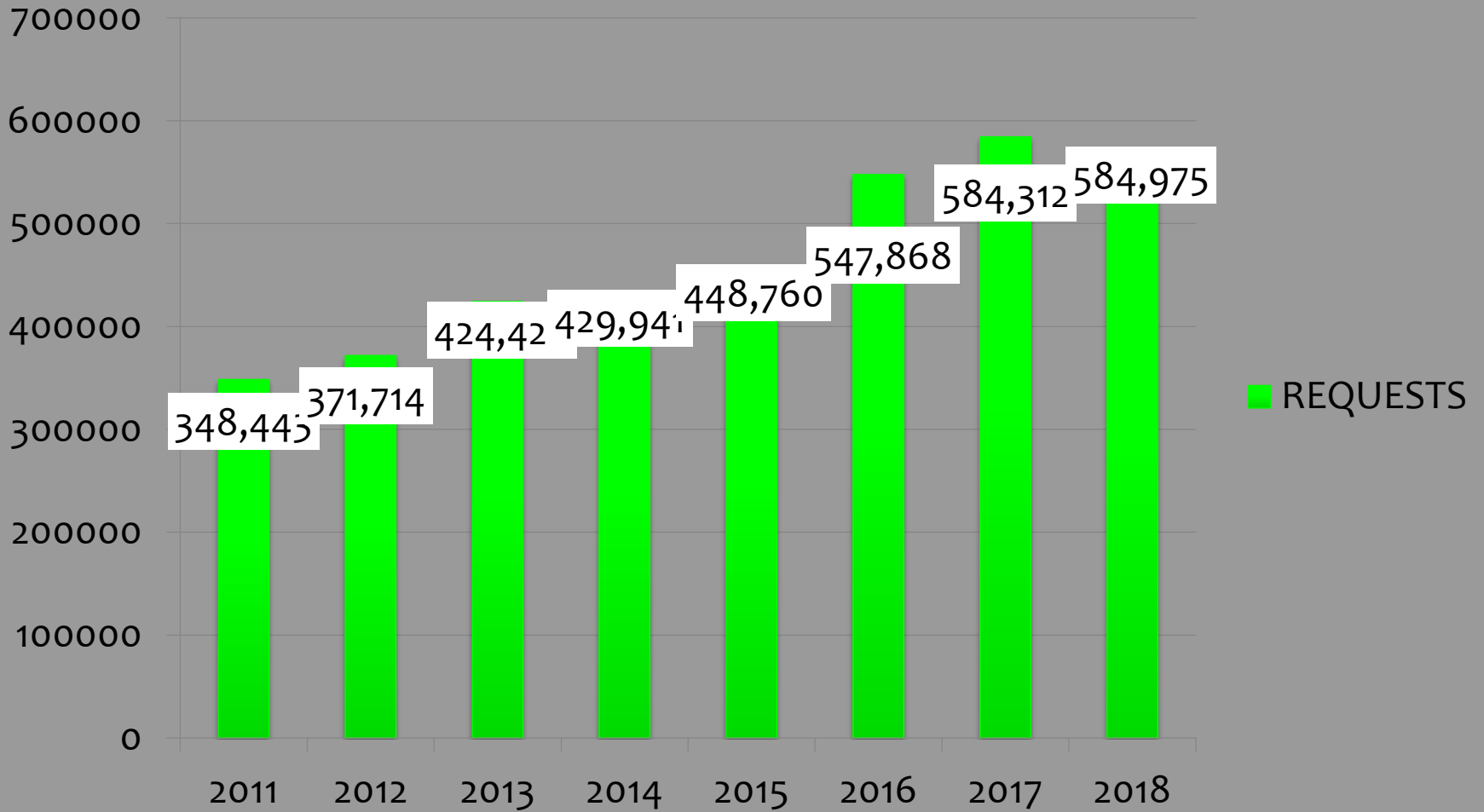
Addresses Key Areas:

- Operational Changes
- Membership
- Enforcement

Alabama Title §37-15



LOCATE REQUESTS 2011-2018





Operational Changes

§37-15-4 – Notice of Intent to Excavate

(b) Notification Period: Notice of intent to excavate must be given at least two but no more than 10 working days prior to the start of proposed excavation **not including the day of notification.**

Notice of intent to demolish must be given at least two working days and no more than 30 calendar days, **not including the day of notification.**

(d) Ticket Life: Notification of an intent to excavate shall be valid for a period of **20** working days from the proposed start date given for excavation and **30** working days from the start date given for demolition.

Sunday Monday Tuesday Wednesday Thursday Friday Saturday

Day of Notification proposed start date Day 1



TWO WORKING DAYS



Sunday Monday Tuesday Wednesday Thursday Friday Saturday

Day 2 Day 3 Day 4 Day 5 Day 6



Sunday Monday Tuesday Wednesday Thursday Friday Saturday

Day 7 Day 8 Day 9 Day 10 Day 11



Sunday Monday Tuesday Wednesday Thursday Friday Saturday

Day 12 Day 13 Day 14 Day 15 Day 16



Sunday Monday Tuesday Wednesday Thursday Friday Saturday

Date of renewal notification Day 17 Day 18 Day 19 Day 20 Ticket expires



TWO WORKING DAYS



Sunday Monday Tuesday Wednesday Thursday Friday Saturday
Day of Notification



TWO WORKING DAYS

Sunday Monday Tuesday Wednesday Thursday Friday Saturday
proposed start date Day 1 Day 2 Day 3 Day 64



Sunday Monday Tuesday Wednesday Thursday Friday Saturday
Day 5 Day 6 Day 7 Day 8 Day 9



Sunday Monday Tuesday Wednesday Thursday Friday Saturday
Day 10 Day 11 Day 12 Day 13 Day 14



Sunday Monday Tuesday Wednesday Thursday Friday Saturday
Day 15 Day 16 Day 17 Day 18
Date of Renewal Notification



TWO WORKING DAYS



Operational Changes

§37-15-4 – Notice of Intent to Excavate

(c) *Premark:* In the event the location requirements of this subsection can not met, the excavator shall ***premark*** the route or boundaries of the site of proposed excavation or demolition by means of white as the identifying color on stakes, flags, paint, buoys or clearly identifiable materials placed on the surface of the ground or water ***prior to the notification to the One Call Notification System. However, premarking is not required when the premarking could reasonably interfere with traffic or pedestrian control.***

Definition of Premark: To delineate the general scope of the excavation on the surface of the ground using white paint, white stakes, or other similar white markings.

Operational Changes

§37-15-4 – Notice of Intent to Excavate

- (i) Any person who complies with the notification requirements of this chapter is not liable for damage to an operator's underground facility if all of the following are satisfied:
 - 1) The operator received the notification required by Section 37-15-4
 - 2) The operator failed to locate its underground facilities as required by Section 37-15-6
 - 3) The damage is a proximate result of the operator's failure to locate its underground facilities as required by Section 37-15-6

Membership Changes

§37-15-5 – Underground Damage Prevention Program

- (a) (1)** Operators who have underground facilities within this state shall participate in ***and utilize the services of the*** One Call Notification System.

Tiered membership requirements

January 1, 2020-

Operators who are current members must remain members

January 1, 2021 –

Operators with more than 25K customers or 500 miles of underground must become members

January 1, 2022 –

All remaining operators must become members



Membership Changes

§37-15-5 – Underground Damage Prevention Program

- (a) (5) Operators of electrical underground facilities who join the One Call Notification System under the requirements of subdivision (a) (3) or (4) having less than 5% underground trench miles compared to the total miles of line, is not subject to the membership costs until their underground trench miles exceed the trench mile exemption. These operators will be required to report annually to the One Call Notification System their percentage of underground trench miles by the end of each calendar year.

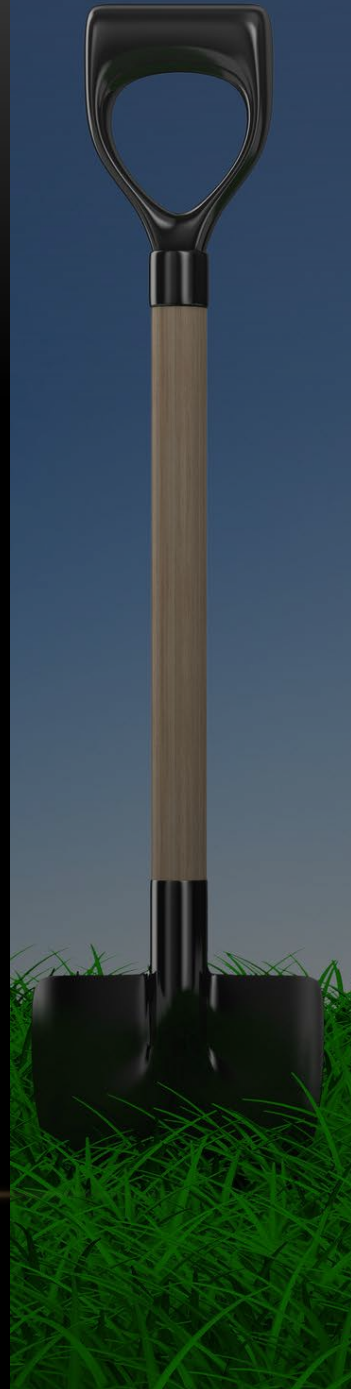


Membership Changes

§37-15-5 – Underground Damage Prevention Program

- (a) (6) If an operator fails to become a member as required, and that failure is a cause of damage to the underground facility caused by a person who has complied with the law and exercised reasonable care during excavation activities that caused the damage the operator has no right of recovery against the person for the damage to that facility.

- (7) The membership provision is repealed after 7 years from the effective date of the bill (1/1/27).



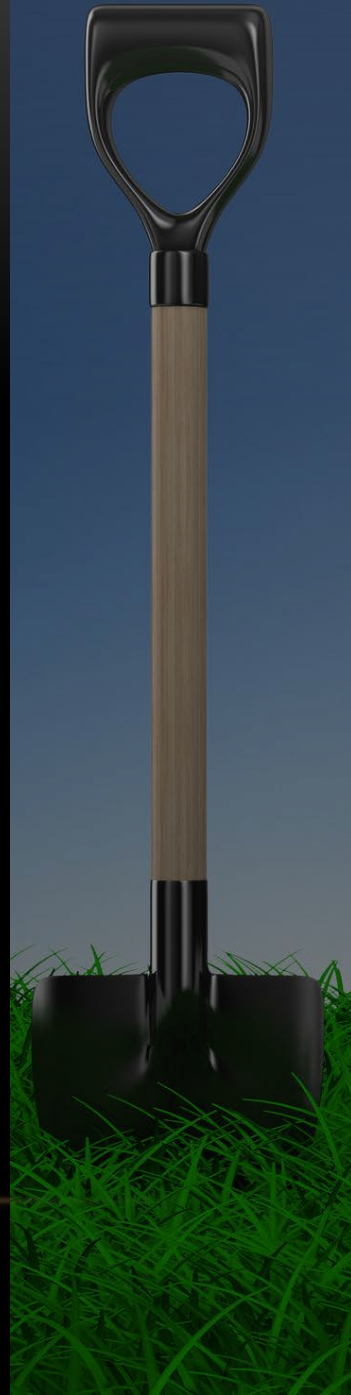
One Call Notification System

§37-15-5 – Underground Damage Prevention Program

(b) The One Call Notification Center must provide a report of operations and financial review or audit to the PSC annually.

(c) A statewide One Call Notification Center

(d) The one call shall be governed by a board of directors representing its membership in accordance with the one call center by-laws.



One Call Notification System

§37-15-5 – Underground Damage Prevention Program

(h) The services of the One Call Notification System should be provided on working days *in accordance with the established working day hours.*

Working Day Hours: The time defined from 7:00 am to 5:00 pm local time on working days.

Working Day: A 24 hour period commencing *the beginning of the start of the next working day.*





Operator Response

§37-15-6 – Response to Notice of Intent to Excavate or Demolish

(a) (3) A member operator that states that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements under Section 37-15-6 but shall provide the best available information to the person excavating in order to comply with requirements of this section. A person excavating is not liable for an damage to an underground facility under the exemption in this subdivision if the excavation or demolition is performed with reasonable care as noted in Section 37-15-8 and the excavator uses deduction equipment or other acceptable means to determine the location of the underground facilities.



Positive Response

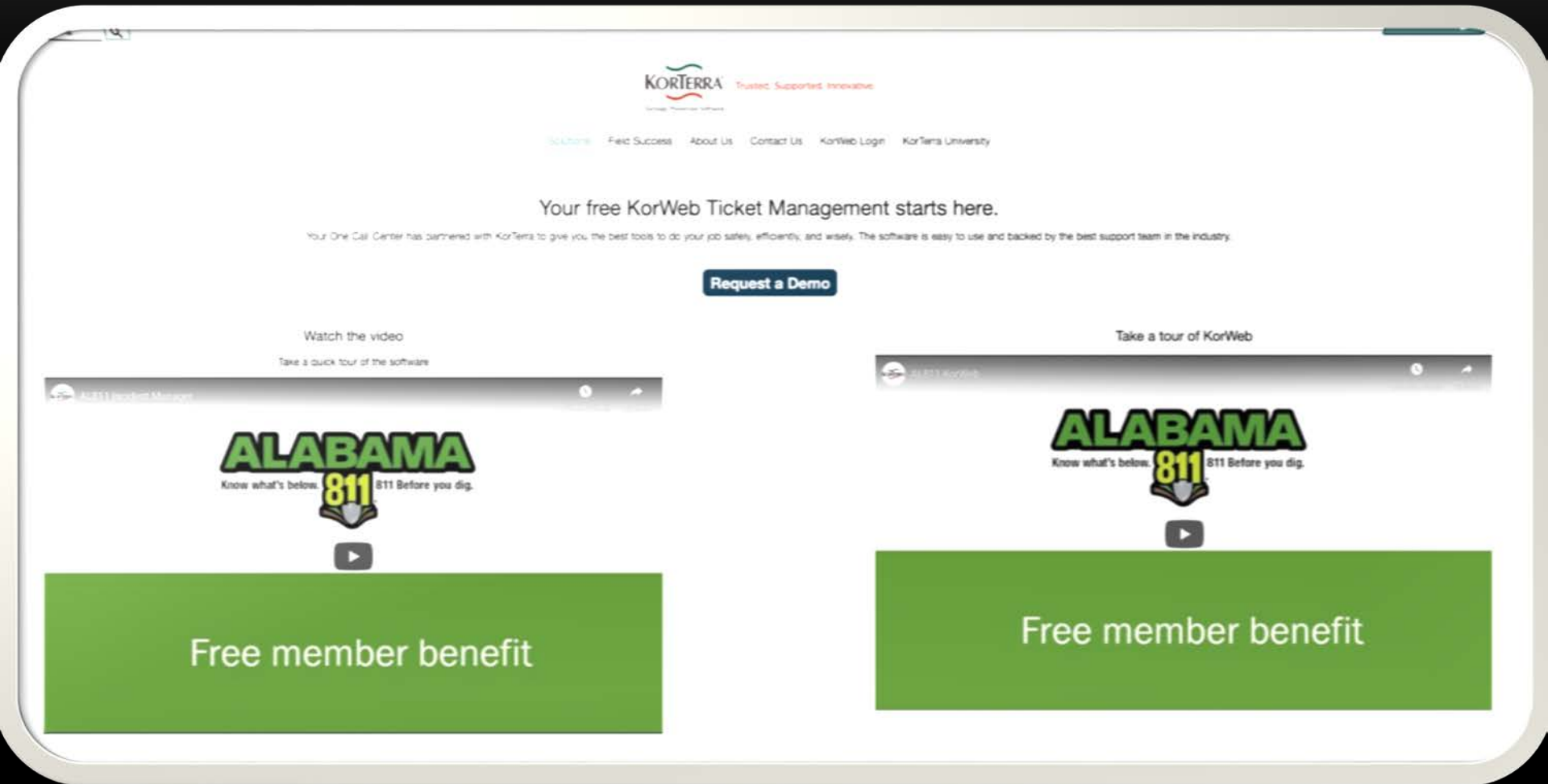
Effective 1/1/21

§37-15-6 – Response to Notice of Intent to Excavate or Demolish

(d) Each operator, upon determining that no underground facility is present on the tract or parcel of land or upon completion of the marking of the location of any underground facilities on the tract or parcel of land shall provide a positive response with the information to the One Call Notification System in accordance with the procedures developed by the One Call Notification System.

Positive Response defined as the communication among member operators, persons excavating and the One Call Notification System concerning the status of locating an underground facility.

KorWeb Ticket Management



<https://www.korterra.com/solutions/korweb/korweb-for-al811>

Year End Reporting

§37-15-9 – Excavation or Demolition Damage

(c) If an event damages any pipe, cable or its protective covering, or other underground facility, or there is a significant near miss that could be resulted in a damage, the operator receiving the notice shall file a report with the One Call Notification System. Reports must be submitted annually, no later than March 31st for the prior calendar year, or more frequently at the option and sole discretion of the operator. Each report must describe, if known, the cause, nature, and location of the damage. The One Call Notification System shall establish and maintain a process to facilitate submission of reports by operators or persons excavating.

Near Miss: An event where damage did not occur, but a clear potential for damage was identified.





Enforcement

§37-15-10 – Civil Penalties and Enforcement

Defined Violation Penalties

1st Violation – Complete a course of training and/or pay a civil penalty not to exceed \$500 per incident

2nd Violation – Complete a course of training and/or pay a civil penalty not to exceed \$1,000 per incident

3rd Violation – Complete a course of training and pay a civil penalty not to exceed \$3,000 per incident.

Gross negligence or willful noncompliance – Complete a course of training and pay a civil penalty not to exceed \$10,000 per incident.



Enforcement

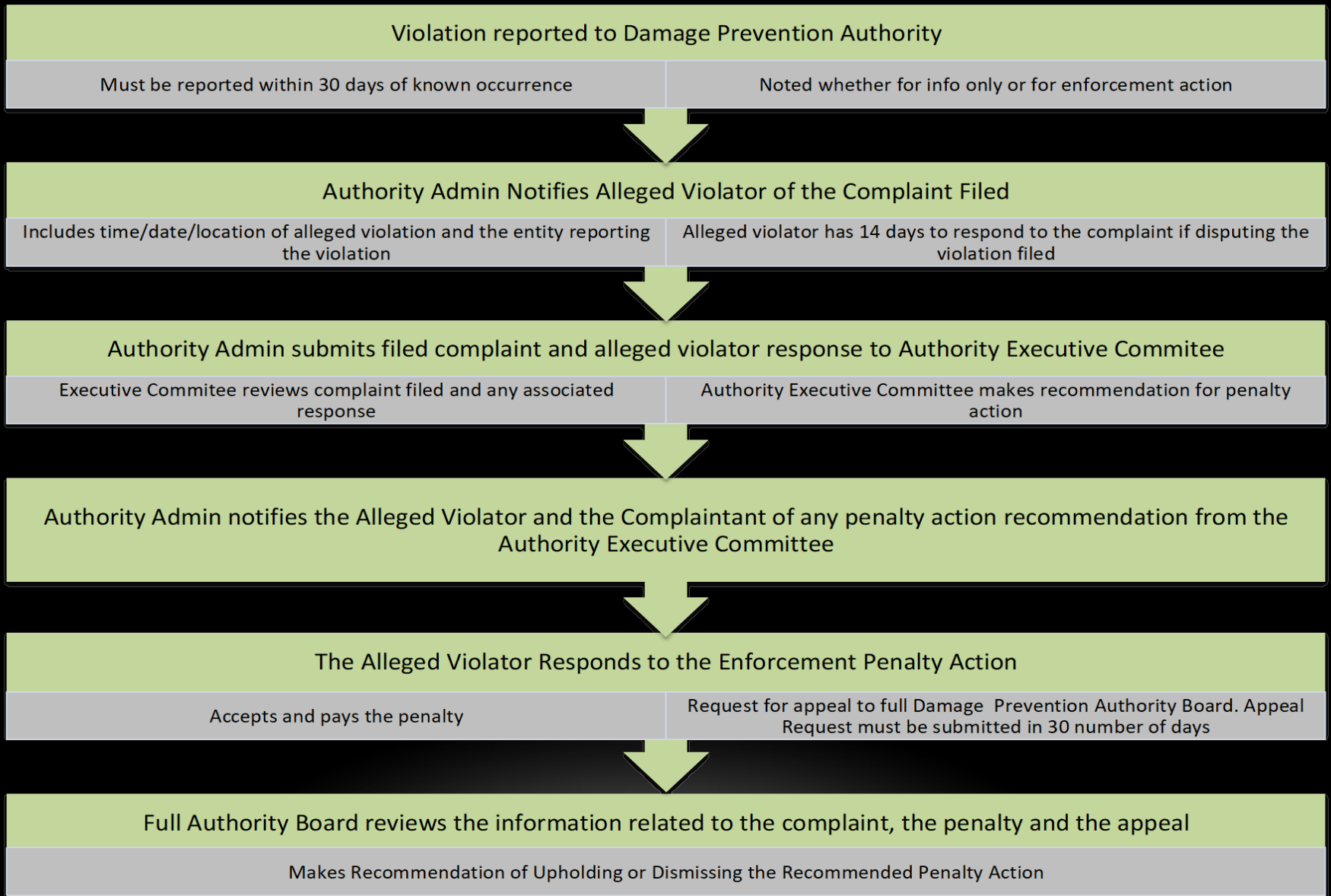
§37-15-10 – Civil Penalties and Enforcement

Willful Noncompliance – the intentional refusal or failure to perform, or comply with, a duty created or imposed by this chapter or by the rules promulgated pursuant to this chapter.

- A person required to complete a course of training shall be responsible for paying for the training.
- If person is a firm, partnership, etc it may be required that at least one manager or supervisor be required to attend.

All penalties collected shall be paid to the Underground Damage Prevention Fund. Funds will be used to carry out the functions of the Underground Damage Prevention Authority.

Enforcement Process Within Underground Damage Prevention Authority Board



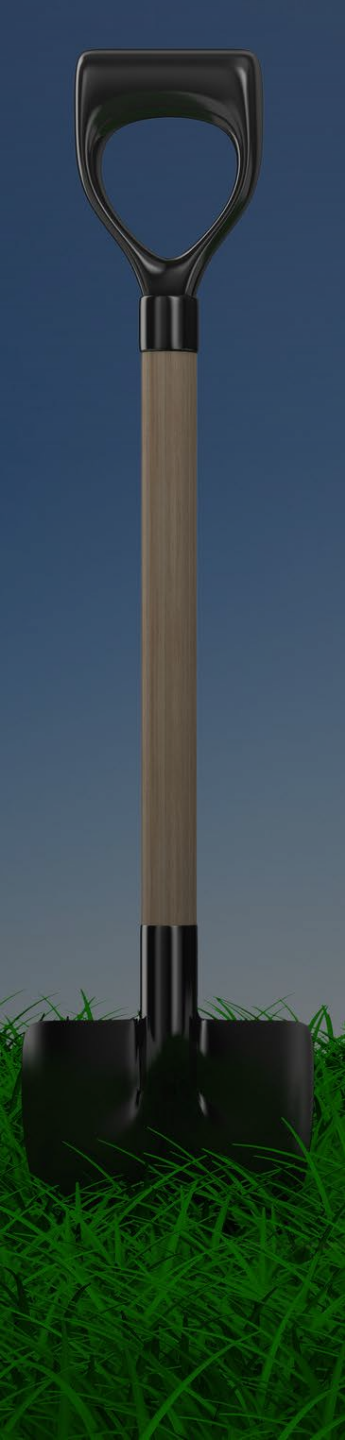


§37-15-10.1 – Enforcement Authority

- Establishes the Underground Damage Prevention Authority for the purpose of enforcing the law, reviewing the penalty provisions and the adequacy of the enforcement process.
- Composed of a Governor appointed board of 17 underground facility protection stakeholders established within 90 days of effective date.
- Alabama PSC will provide administrative support. Designated that the PSC authority is for the administrative capacity only and nothing in this chapter shall expand the jurisdiction of the AL PSC.

Authority Board Makeup

- Attorney General's Office
- AL PSC – Gas Pipeline Safety
- ALDOT
- AL County Engineers
- Cable Television
- Electric Utility
- Municipal Utility
- Natural Gas Distribution
- One Call Notification Center
- Professional Excavator
- Professional Road Builder
- Professional Land Surveyor
- Telecommunications
- Transmission Pipeline
- Utility Facility Locator
- Water Utility
- Wastewater Utility



Timeline Summary

Notification Period
extended not including
day of notification

Life of locate request
extended to 20
working days

Process for Damage
Reporting

Establishment of
Authority Board

Operators with more
than 25K customers or
500 miles of
underground

Positive Response

Operators with less
than 25K customers
or less than 500
miles of underground

January 2020

January 2021

January 2022

Law - Alabama 811

Not Secure | al811.com/law/


Apps Getting Started 15 Google Calendar Call forwarding-ex... Polls | Poll Everyw... 0 Notifications Other Bookmarks

ALABAMA 811 Know what's below. 811 before you dig.

Home Member List Contact Us FAQs About Become a Member [Start a Locate Request](#)

Law

[New Legislative Change Overview](#)



Copy of Legislative with 2019 Session Changes effective 1/1/20
[Law_Markup_2019](#)

[Alabama One Call Commission Study Report - January 2018](#)

[How to File a Violation Complaint](#)

To download a PDF version of the law, [Click Here](#)

- [Section 37-15-1 Purpose and intent.](#)
- [Section 37-15-2 Definitions.](#)
- [Section 37-15-3 Prohibition.](#)
- [Section 37-15-4 Notice of intent to excavate or demolish.](#)
- [Section 37-15-4.1 Design or survey locate requests.](#)

www.al811.com/law/



NEW DAMAGE PREVENTION LEGISLATION UPDATES OVERVIEW EFFECTIVE JANUARY 1, 2020

37-15-2 - DEFINITIONS

- Defined near miss.
- Defined positive response.
- Defined pre mark.
- Defined willful noncompliance.
- Revised working day to a 24 hour period commencing 'the beginning of the start of the next working day'.
- Defined working day hours as the time from 7AM to 5PM local time on working days.

37-15-4 - NOTICE OF INTENT TO EXCAVATE OR DEMOLISH

- Extends facility owner's length of time to mark their facility to 2 full working days, excluding the day of notification.
- Extends life of locate request from 10 to 20 working days, for excavation, and from 20 to 30 working days for demolition.
- Limits the liability of an excavator for damages caused to underground facilities if all of the following apply:
 - Excavator has complied with the Act.
 - Owner received locate notification yet failed to locate.
 - Damage was a direct result of failure to locate.

37-15-5 - UNDERGROUND DAMAGE PREVENTION PROGRAM

- Requires all underground utility owners to become a member of Alabama 811.
- Provides for phased in membership over a 2 year period, based on their size.
- Grants relief to excavators for damages to underground facilities should the owner of damaged facilities fail to join Alabama 811.
- Establishes a 7 year sunset on the membership requirement.
- Increases the Public Service Commission's regulatory oversight of Alabama 811 through additional annual reporting requirements.

37-15-6 - RESPONSE TO NOTICE OF INTENT TO EXCAVATE OR DEMOLISH

- Grants relief from physical markings of facilities, with conditions, if a member facility owner does not have accurate information regarding exact location of facilities.
- Requires facility owner to provide a positive response to Alabama 811 once the facility owner has determined that their facilities are not impacted or has marked their facilities at the proposed excavation site. This requirement will take effect January 1, 2021.
- Damages and near misses must be reported by the operator to Alabama 811 annually, no later than March 31 for the prior calendar year.

37-15-10 - CIVIL PENALTIES AND ENFORCEMENT

- Establishes and defines a tiered set of civil penalties and fines for violations of the Act.
- Establishes an Underground Damage Prevention Fund which will be funded by levied violation penalties.

37-15-10.1 - ENFORCEMENT AUTHORITY

- Creates the Underground Damage Prevention Authority, made up of stakeholders for the purpose of enforcing the law, and reviewing penalty provisions and the adequacy of the enforcement process.

37-15-10.2 - ENFORCEMENT PROCESS

- Allows the Underground Damage Prevention Authority to review violation complaints and render penalties and fines for violations of the Act.

For more information visit:

www.al811.com

or contact Alabama 811

personnel directly at:

205.731.3200

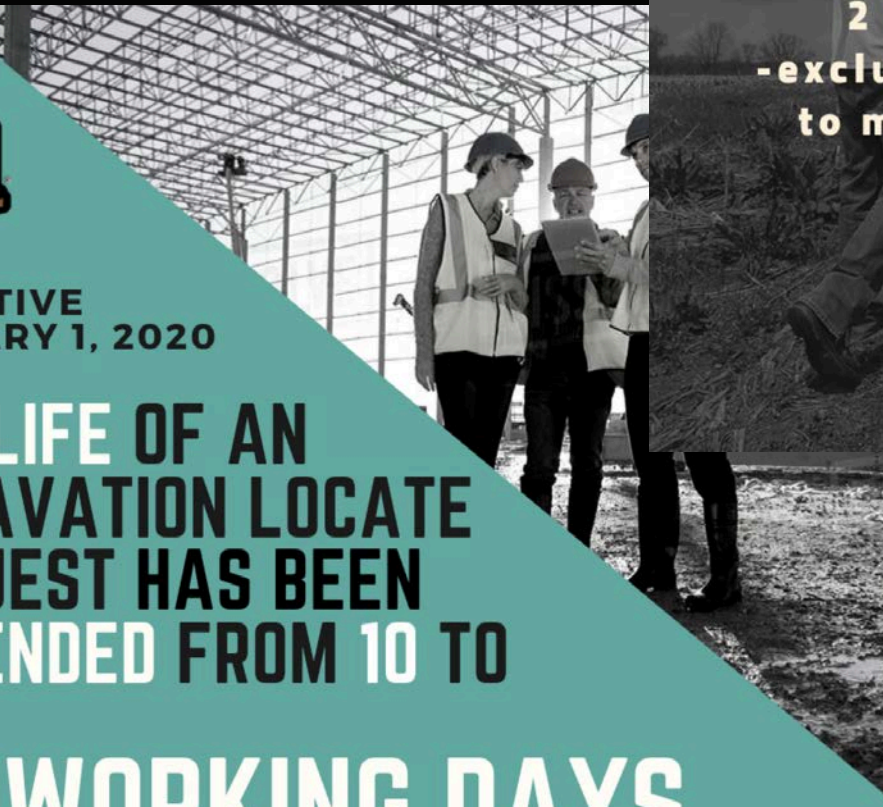


Know what's below.
811 before you dig.



**EFFECTIVE
JANUARY 1, 2020**

**THE LIFE OF AN
EXCAVATION LOCATE
REQUEST HAS BEEN
EXTENDED FROM 10 TO
20 WORKING DAYS**



**BEGINNING
JANUARY 1, 2020**

**Facility owners now have
2 FULL WORKING DAYS
-excluding day of notification-
to mark their underground
facilities.**





ALABAMA 811 CONTACTS

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