

Current Code Sections	Changes/ Additions	2018 Revised Statute Provisions
N/A	ORDINANCE NO. _TBD___AN ORDINANCE ADOPTING A NEW PART 121 (UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM) OF ARTICLE 1 OF CHAPTER 12 OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO UNDERGROUND EXCAVATION REGULATIONS AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF	<p><b>9-1.5-104.2. Underground damage prevention safety commission - creation - review of violations - enforcement - rules.</b></p> <p>(d) The governing body of a home rule county, city and county, municipality, or power authority established pursuant to section 29-1-204 (1) shall adopt by resolution, ordinance, or other official action either:</p> <p>(I) Its own damage prevention safety program similar to that established pursuant to this article 1.5; or</p>
3.3.203: APPLICATION FOR LICENSE; FEES; TERM; BOND AND INSURANCE REQUIREMENTS; SUSPENSION OR REVOCATION:	The license will be issued by the City Clerk upon payment of all application and license fees, <b>successful completion of the City's Underground Damage Prevention Safety Class</b> and compliance with the provisions of this part and the General Licensing Code.	N/A

N/A	<p><b>12.10.101: Definitions:</b>  PREMARK: Marking the route of the excavation either electronically or with white paint, flags, stakes or a combination of such methods to outline the dig site prior to notifying Colorado 811, and before the Locator arrives on the site.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b>  (II) If an area of excavation cannot be accurately described on the locate request, the excavator shall notify the owner or operator of the area of excavation using one or more of the following methods: (A) Physical delineation with white marks on a hard surface area; (B) Electronic delineation on a map, plan sheet, or aerial photograph that can be transmitted electronically from the excavator to the facility owner or operator through the notification association; or (C) Scheduling an on-site meeting between the excavator and the owner or operator.</p>
N/A	<p><b>12.10.101: Definitions:</b>  SOFT DIGGING: any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.</p>	<p><b>9-1.5-102. Definitions.</b>  <b>(3)</b> "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, hydro excavating, postholing, and tunneling.</p>

<p>N/A</p>	<p><b>12.10.101: Definitions:</b>  PROGRAM: Also known as the Colorado Springs Underground Damage Prevention Safety Program or Program, as set forth in this Part. The Program will collaborate with the Notification Association and other state agencies on the enforcement authority as established by statute.  PROGRAM MANAGER: The person appointed by the Chief Executive Officer to administer this Program.</p>	<p><b>9-1.5-104.2. Underground damage prevention safety commission - creation - review of violations - enforcement - rules.</b>  (d) The governing body of a home rule county, city and county, municipality, or power authority established pursuant to section 29-1-204 (1) shall adopt by resolution, ordinance, or other official action either:  (I) Its own damage prevention safety program similar to that established pursuant to this article 1.5; or</p>
<p><b>3.3.211: WORK PROCEDURES AND OPERATIONS:</b>  B. Prior to opening an excavation in a public place, it shall be the duty of the excavator to determine whether underground facilities and utilities, (i.e., sewer, telephone, water, fuel, electric lines, underground traffic signal cables, cable television, etc.), will be encountered, and if so, where the underground facilities are located. No excavator, excavator's employee or agent, any subcontractor of the excavator or any other person shall commence any excavation unless and until information regarding facilities and utilities has been requested and obtained detailing the status of the public place in question not more than five (5) working days prior to the excavation.</p>	<p><b>12.10.101: Definitions:</b>  UTILITY LOCATE: Actions taken using reasonable care to advise an Excavator of the location, number and size of any underground facilities in the proposed excavation area including laterals in the public right of way, by marking the location for the facilities with clearly identifiable markings within eighteen inches horizontally from the exterior sides of the facilities.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b>  (II) Effective January 1, 2021, except in emergency situations and except as to an employee or an employer's contractor with respect to the employer's underground facilities, a person shall not make or begin excavation without first notifying the notification association. Notice may be given by electronic methods approved by the notification association or by telephone.</p>

	<p><b>12.10.101: Definitions:</b>  VIOLATION: A determination by the Program Manager that a violation of this Article 10 has occurred.</p>	<p><b>9-1.5-104.2. Underground damage prevention safety commission - creation - review of violations - enforcement - rules.</b>  (2) The safety commission may review complaints of alleged violations of this article</p>
N/A	<p><b>12.10.101: Definitions:</b>  VIOLATION, MAJOR: A major violation includes, but is not limited to, a act that the Program Manager finds to be in blatant disregard of this Article 10, and the potential for injury to the public or property is highly probable.  VIOLATION, MODERATE. A moderate violation includes, but is not limited to, an act that the Program Manager finds to be in violation of this Article 10, and the potential for injury to the public or property is foreseeable.  VIOLATION, MINOR: A minor violation includes, but is not limited to, a frivolous complaint or an act that the Program Manager finds to be in violation of this Article 10, and the potential for injury to the public or property is not a factor.</p>	<p><b>9-1.5-104.4. Penalties - guidance.</b>  (a) Guidance shall be developed to help the review committee in determining whether an alleged violation should be classified as a minor, moderate, or major violation;</p>

	<p><b>Section 12.10.103: UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM</b></p> <p>The Chief Executive Officer will establish the Underground Damage Prevention Safety Program (“Program”) in the department of Regulatory and Compliance_____. The Chief Executive Officer will appoint a Program Manager (“Manager”). The Manager of the Program will:</p> <p>(1.) Collaborate with the Colorado Underground Damage Prevention Safety Commission, the Notification Association and other state agencies to develop best practices and training to prevent damage to underground utilities.</p> <p>(2.) Review complaints alleging violations of this Article and order appropriate remedial action or penalties.</p> <p>(3.) Establish best practices, the violation of which will result in penalties under this Article.</p>	<p><b>9-1.5-104.2. Underground damage prevention safety commission - creation - review of violations - enforcement - rules.</b></p> <p>(1) (a) There is hereby created the underground damage prevention safety commission in the department of labor and employment. The safety commission is transferred to the department by a <b>type 2</b> transfer as that term is defined in section 24-1-105. The safety commission shall:</p> <p>(l) Advise the notification association and other state agencies, the general assembly, and local governments on:</p> <p>(A) Best practices and training to prevent damage to underground utilities;</p> <p>(B) Policies to enhance public safety, including the establishment and periodic updating of industry best standards, including marking and documentation best practices and technology advancements; and</p> <p>(C) Policies and best practices to improve efficiency and cost savings to the 811 program, including the review, establishment, and periodic updating of industry best standards, to ensure the highest level of productivity and service for the benefit of both excavators and owners and</p>
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	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1.Premarking. A person planning to conduct an excavation will premark the area to be excavated by marking the route of a proposed excavation either electronically or with white paint, flags, stakes or a combination of such methods to outline the dig site, before calling the Notification Association. If the area is not premarked, an owner or operator may, at their discretion, choose not to locate and field mark any underground facilities, until the area to be excavated has been premarked.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b></p> <p>(II) If an area of excavation cannot be accurately described on the locate request, the excavator shall notify the owner or operator of the area of excavation using one or more of the following methods:</p> <ul style="list-style-type: none"><li>(A) Physical delineation with white marks on a hard surface area;</li><li>(B) Electronic delineation on a map, plan sheet, or aerial photograph that can be transmitted electronically from the excavator to the facility owner or operator through the notification association; or</li><li>(C) Scheduling an on-site meeting between the excavator and the owner or operator.</li></ul>
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<p><b>3.3.211: WORK PROCEDURES AND OPERATIONS:</b>  B. Prior to opening an excavation in a public place, it shall be the duty of the excavator to determine whether underground facilities and utilities, (i.e., sewer, telephone, water, fuel, electric lines, underground traffic signal cables, cable television, etc.), will be encountered, and if so, where the underground facilities are located. No excavator, excavator's employee or agent, any subcontractor of the excavator or any other person shall commence any excavation unless and until information regarding facilities and utilities has been requested and obtained detailing the status of the public place in question not more than five (5) working days prior to the excavation.</p> <p><b>3.3.205: CITY RESPONSIBILITIES:</b>  Within two (2) business days after the day a licensed excavator gives notice of intent to excavate, the City shall advise the excavator of the location and size of underground facilities in the proposed excavation area by marking the location of the facilities by clearly identifiable markings within eighteen inches (18") horizontally from the exterior</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b>  2. Notification Association. A person will not make or begin excavation without first notifying the Notification Association and making a locate request.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b>  (II) Effective January 1, 2021, except in emergency situations and except as to an employee or an employer's contractor with respect to the employer's underground facilities, a person shall not make or begin excavation without first notifying the notification association. Notice may be given by electronic methods approved by the notification association or by telephone.</p>
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<p><b>3.3.205: CITY RESPONSIBILITIES:</b>  C. When possible and without assuming any additional liability for its actions, the City may assist the excavator in exposing underground facilities and locating privately owned gas, electric, water and wastewater service lines running from the main line to individual structures on private property.</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b>  1. Gas Standby Process. If a person is excavating across a preexisting underground natural gas facility, the excavator must schedule an appointment for a standby with the owner three days before excavation occurs.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b>  If a person is involved in excavating across a preexisting underground facility, the owner of such facility shall, upon a predetermined agreement at the request of the excavator or the owner, provide on-site assistance.</p>
<p><b>3.3.211: WORK PROCEDURES AND OPERATIONS:</b>  C. When the excavation approaches the estimated location of the facility or utility, the exact location shall be determined and reasonable precautions, to include hand digging at the estimated location, shall be taken in uncovering the facility. When it is located, proper support shall be provided for the existing facility or utility. Utility companies, traffic engineering division, telephone company, cable television company and any other company having underground facilities or utilities shall be contacted and advised of proposed work five (5) days prior to the start of actual excavation.</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b>  1. Nondestructive means on edges. When a person excavates within eighteen inches horizontally from the exterior edges of any marked underground facility, the person will use nondestructive means of excavation prescribed by the Program Manager, to identify underground facilities and will otherwise exercise reasonable care to protect any underground facility in or near the excavation area.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b>  (b) (l) (A) When a person excavates within eighteen inches horizontally from the exterior sides of any marked underground facility, the person shall use nondestructive means of excavation to identify underground facilities and shall otherwise exercise reasonable care to protect any underground facility in or near the excavation area. When utilizing trenchless excavation methods, the excavator shall expose underground facilities and visually observe the safe crossing of marked underground facilities when requested to do so by the underground facility owner or operator or the government agency that issued a permit for the excavation.</p>



	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1. Trenchless excavation. When utilizing trenchless excavation methods, the Excavator will expose underground facilities and visually observe the safe crossing of marked underground facilities.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b></p> <p>(b) (l) (A) When a person excavates within eighteen inches horizontally from the exterior sides of any marked underground facility, the person shall use nondestructive means of excavation to identify underground facilities and shall otherwise exercise reasonable care to protect any underground facility in or near the excavation area. When utilizing trenchless excavation methods, the excavator shall expose underground facilities and visually observe the safe crossing of marked underground facilities when requested to do so by the underground facility owner or operator or the government agency that issued a permit for the excavation.</p>
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<p><b>3.3.205: CITY RESPONSIBILITIES:</b></p> <p>B. If the information in subsection A of this section is not provided within two (2) business days or at another time as agreed between the City and excavator, or if the information provided fails to identify the facilities in accord with subsection A of this section, the excavator may proceed except as otherwise provided by law or regulation.</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1. Cessation of excavation for failure to locate. If documentation or markings requested and needed by an excavator pursuant to C.R.S. § 9-1.5-103 (4)(a)(1) are not provided by the owner or operator pursuant thereto within two business days, not including the day of actual notice, or such later time as agreed upon by the excavator and the owner or operator, or, if the documentation or markings provided fail to identify the location of the underground facilities, the excavator will immediately give notice through the Notification Association or to the owner or operator. Upon receipt of the notification, the affected owner or operator will respond as quickly as practicable. The excavator will cease excavation activities at the affected location until the location of any underground facilities has been reverified.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b></p> <p>(1) If documentation or markings requested and needed by an excavator pursuant to subsection (4) of this section are not provided by the owner or operator within two business days, not including the day of actual notice, or such later time as agreed upon by the excavator and the owner or operator, or, if the documentation or markings provided fail to identify the location of the underground facilities, the excavator shall immediately give notice through the notification association to the owner or operator, may proceed with the excavation, and is not liable for such damage except upon proof of the excavator's lack of reasonable care.</p>
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<p><b>3.3.205: CITY RESPONSIBILITIES:</b></p> <p>B. If the information in subsection A of this section is not provided within two (2) business days or at another time as agreed between the City and excavator, or if the information provided fails to identify the facilities in accord with subsection A of this section, the excavator may proceed except as otherwise provided by law or regulation.</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1. Cessation of excavation – lost, invalid or inaccurate markings. If the documentation or markings maintained pursuant to C.R.S. § 9-1.5-103 (4)(a)(1) become lost, invalid or inaccurate, the excavator will notify the notification association or the affected owner or operator through the notification association and request an immediate reverification of the location of any underground facility. Upon receipt of the notification, the affected owner or operator will respond as quickly as is practicable. The excavator will cease excavation activities at the affected location until the location of any underground facilities has been reverified.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b></p> <p>(II) (A) If the documentation or markings maintained pursuant to subsection (4)(c)(I) of this section become lost or invalid, the excavator shall notify the notification association or the affected owner or operator through the notification association and request an immediate reverification of the location of any underground facility. Upon receipt of the notification, the affected owner or operator shall respond as quickly as is practicable. The excavator shall cease excavation activities at the affected location until the location of any underground facilities has been reverified.</p> <p>(B) If the documentation or markings maintained pursuant to subsection (4)(c)(I) of this section are determined to be inaccurate, the excavator shall immediately notify the affected owner or operator through the notification association and shall request an immediate reverification of the location of any underground facility. Upon receipt of the notification, the affected owner or operator shall respond as quickly as practicable. The excavator may continue excavation activity if the excavator exercises due caution and care to prevent damaging any underground facility.</p>
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<p><b>3.3.211: WORK PROCEDURES AND OPERATIONS:</b></p> <p>B. Prior to opening an excavation in a public place, it shall be the duty of the excavator to determine whether underground facilities and utilities, (i.e., sewer, telephone, water, fuel, electric lines, underground traffic signal cables, cable television, etc.), will be encountered, and if so, where the underground facilities are located. No excavator, excavator's employee or agent, any subcontractor of the excavator or any other person shall commence any excavation unless and until information regarding facilities and utilities has been requested and obtained detailing the status of the public place in question not more than five (5) working days prior to the excavation.</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1. Timing to Request a Locate. No person will request marking pursuant to C.R.S. § 9-1.5-103 (4)(a)(1) unless excavating is scheduled to commence.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b></p> <p>(b) Notice of the commencement, extent, and duration of the excavation work shall be given at least two business days prior thereto not including the day of actual notice.</p> <p>(c)(I) Any notice given pursuant to subsection (3)(b) of this section must include the following:</p> <p>(A) The name and telephone number of the person who is giving the notice;</p> <p>(B) The name and telephone number of the excavator; and</p> <p>(C) The specific location, starting date, and description of the intended excavation activity.</p>
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<p><b>3.3.211: WORK PROCEDURES AND OPERATIONS:</b></p> <p>B. Prior to opening an excavation in a public place, it shall be the duty of the excavator to determine whether underground facilities and utilities, (i.e., sewer, telephone, water, fuel, electric lines, underground traffic signal cables, cable television, etc.), will be encountered, and if so, where the underground facilities are located. No excavator, excavator's employee or agent, any subcontractor of the excavator or any other person shall commence any excavation unless and until information regarding facilities and utilities has been requested and obtained detailing the status of the public place in question not more than five (5) working days prior to the excavation.</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1. Failure to Timely Commence Excavation. After an owner or operator has made the requested marking, the excavator must commence work within ten days of the “locate by” date on the locate ticket created by Colorado 811.</p>	<p><b>9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.</b></p> <p>(b) Notice of the commencement, extent, and duration of the excavation work shall be given at least two business days prior thereto not including the day of actual notice.</p> <p>(c)(I) Any notice given pursuant to subsection (3)(b) of this section must include the following:</p> <p>(A) The name and telephone number of the person who is giving the notice;</p> <p>(B) The name and telephone number of the excavator; and</p> <p>(C) The specific location, starting date, and description of the intended excavation activity.</p>
<p>N/A</p>	<p><b>Section 12.10.104: Best Practices: Notice of Excavation - Duties of Excavators – Duties of Owners and Operators – Violations</b></p> <p>1. Repeated Requests Violation. No person will make repeated requests for marking pursuant to C.R.S. § 9-1.5-103 (4)(a)(1) unless the repeated request is required for excavating to continue, or due to circumstances not reasonably within the control of the Person. Any person who fails to comply with this subsection (14.) will be liable to the facility owner or operator for \$100 or actual costs, whichever is greater, for each repeated request for remarking.</p>	<p>N/A - Other states have this included in law</p>

<p><b>3.3.203: APPLICATION FOR LICENSE; FEES; TERM; BOND AND INSURANCE REQUIREMENTS; SUSPENSION OR REVOCATION:</b></p> <p>E. Stop Work Orders; License Suspension Or Revocation:</p> <p>1. In addition to any other remedies or actions permitted by law, the City Engineer may order an excavator to stop work if the following conditions are observed:</p> <p>a. The excavator fails to obtain a location and injures or damages persons or property;</p> <p>b. The excavator fails to place and maintain barriers, warning devices or routing signs necessary for safety as specified by the "Manual On Uniform Traffic Control Devices (MUTCD)";</p> <p>c. The excavator's conduct constitutes an immediate hazard to the public health, safety and general welfare sufficient to rise to the level of an emergency.</p> <p>2. In addition to any other remedies or actions permitted by law, the Deputy Licensing Officer may issue cease and desist orders or initiate license suspension or revocation proceedings under the provisions of chapter 2, article 1, part 8 of the City Code against any excavator for a violation of</p>	<p><b>Section 12.10.104 Complaints</b></p> <p>(1) The Colorado Underground Damage Prevention Safety Commission will receive all complaints and refer those appropriate to the Program Manager.</p> <p>(2)The Program Manager will investigate the complaint and alleged damage. The Program Manager will characterize the violations as minor, moderate or major. If violations are found, the Program Manager will notify the proper party by letter of the violation and damage, and assess the Act's statutory penalties by. The Program Manager may also issue warnings and require safety trainings as appropriate for the circumstances.</p> <p>(3) The Program Manager may recommend to the City Engineer that the party's excavator's license/permit issued pursuant to City Code section 3.3.202 be suspended or revoked.</p> <p>(4) If the complaint is against the City or Utilities, the Program Manager will refer it to the City Attorney's Office to designate a Hearing Officer for formal review.</p>	<p><b>9-1.5-104.2. Underground damage prevention safety commission - creation - review of violations - enforcement - rules.</b></p> <p>(d)The governing body of a home rule county, city and county, municipality, or power authority established pursuant to section 29-1-204 (1) shall adopt by resolution, ordinance, or other official action either:</p> <p>(l)Its own damage prevention safety program similar to that established pursuant to this article 1.5; or</p>
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<p><b>12.3.311: APPEALS:</b>  The decision or determination of the Hearing Officer shall in all cases be final and conclusive. A decision or determination of the Hearing Officer may only be reviewed by a District Court of the State of Colorado pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure, or successor rule. There shall be no stay of execution of the Hearing Officer's decision pending decision by the District Court, except by court order. In the event that the District Court remands the matter back to the Hearing Officer for additional proceedings, then there shall be no reinstatement of licensed privileges pending additional proceedings, except by court order. (Ord. 06-241)</p>	<p><b>Section 12.10.105: Request For Formal Review By Party Receiving an Administrative Order</b>  (A) Appeal. If a Person is not satisfied with the outcome of the Program Manager's informal review and wishes further proceedings, that Person will submit a written request for a formal review with the City Attorney within five working days of written determination, unless the City Attorney extends the time for good cause. The Person must identify in the request the portion(s) of the informal review results they are disputing  (B) Designation of Hearing Officer. The City Attorney will assign the formal review to an appropriate hearing officer, who will have had no previous involvement with the specific dispute.</p>	<p><b>9-1.5-104.3. Alternative dispute resolution.</b>  The notification association shall create a voluntary alternative dispute resolution program in consultation with its members and all affected parties. The alternative dispute resolution program must be available to all owners or operators, excavators, and other interested parties regarding disputes arising from damage to underground facilities, including any cost or damage incurred by the owner or operator or the excavator as a result of any delay in the excavation project while the underground facility is restored, repaired, or replaced, exclusive of civil penalties set forth in and fines assessed pursuant to section 9-1.5-104.5 or 9-1.5-104.4, that cannot be resolved through consultation and negotiation. The alternative dispute resolution program must include mediation, arbitration, or other appropriate processes of dispute resolution. The issue of liability and amount of damages under Colorado law may be decided by an appointed arbitrator or by the parties in mediation. Nothing in this section changes the basis for civil liability for damages.</p>
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