

1 AN ACT relating to underground facility protection.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 367.4903 is amended to read as follows:

4 As used in KRS 367.4903 to 367.4917:

- 5 (1) "Underground facility" means an underground line or system used for producing,
6 storing, conveying, transmitting, or distributing telecommunications, electricity,
7 gas, petroleum, petroleum products, cable television, hazardous liquids, water,
8 steam, or sewerage, including storm drainage;
- 9 (2) "Damage" means weakening of structural or lateral support or penetration of a
10 facility coating, housing, or other protective device. It also means the partial or
11 complete dislocation or severance of underground facilities or rendering any
12 underground facility permanently inaccessible by the placement of a permanent
13 structure having one (1) or more stories;
- 14 (3) "Demolition" means any operation by which a structure or mass of material is
15 wrecked, razed, moved, or removed by means of mechanized equipment, or
16 discharge of explosives;
- 17 (4) "Excavator" means any entity or individual, other than those exempted by KRS
18 367.4915, engaged in excavation, demolition, or timber harvesting using
19 mechanized equipment;
- 20 (5) "Operator" means any entity or individual owning or operating underground
21 facilities to serve the public, ***but does not include any entity or individual owning***
22 ***or operating underground storage tanks that are subject to Subchapter 60 of KRS***
23 ***Chapter 224;***
- 24 (6) "Excavation" means any activity that results in the movement, placement, probing,
25 boring, or removal of earth, rock, or other material in or on the ground by the use of
26 any tools or equipment, by the discharge of explosives, or by the harvesting of
27 timber using mechanized equipment. Forms of excavating include but are not

1 limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling,
2 pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by
3 use of hand tools to a depth of six (6) inches or less below existing grade shall not
4 constitute excavation;

5 (7) "Emergency" means there exists substantial likelihood that loss of life or property,
6 the inability to restore interrupted utility service, an imminent danger to health or
7 the environment, or the blockage of public transportation facilities will result before
8 procedures required under KRS 367.4909 to 367.4913 can be completed;

9 (8) "Protection notification center" means an operator-provided notification center
10 through which an excavator can contact the operator to enable the operator to
11 provide the excavator with the approximate location of underground facilities;

12 (9) "Kentucky Contact Center" means Kentucky Underground Protection, Inc.,
13 organized as a nonprofit corporation and a multimember protection notification
14 center providing a single telephone contact number and designated by the Kentucky
15 Public Service Commission to be the sole recipient of 811 dialed calls through
16 which an excavator may contact all Kentucky Contact Center members and all
17 affected member operators may receive information to enable them to provide the
18 excavator with the approximate location of underground facilities;

19 (10) "Routine road maintenance" means preservation, including road repairs and
20 resurfacing, and the replacement of signs, posts, and guardrails at the exact same
21 location when no additional penetration of existing grade is necessary, but does not
22 include road construction, installation of signs, posts, and guardrails, or any activity
23 that requires penetration of existing grade;

24 (11) "Approximate location," when referring to an underground facility, means:

25 (a) For underground metallic facilities and underground nonmetallic facilities
26 with metallic tracer wire, a distance not to exceed the combined width of the
27 underground facility plus twenty-four (24)~~eighteen (18)~~ inches measured

- 1 from the outer edge of each side of the underground facility; or
- 2 (b) For unmapped or untonable facilities~~[nonmetallic facilities without metallic~~
3 ~~tracer wire]~~, the underground facility shall be located as accurately as possible
4 from field location records and shall require notification from the operator of
5 the inability to accurately locate the facility;
- 6 (12) "Working day" means every day, except Saturday, Sunday, and holidays
7 established by federal or state statute. For purposes of measuring any period of
8 time prescribed or allowed under the Underground Facility Damage Prevention
9 Act of 1994, a working day shall commence at 12:01 a.m. eastern time and end at
10 12 midnight eastern time excluding the day the locate request was made~~[a twenty-~~
11 ~~four (24) hour period commencing from the time of receipt of the notification by the~~
12 ~~Kentucky Contact Center except Saturday, Sunday, and holidays established by~~
13 ~~federal or state statute];~~
- 14 (13) "Nonintrusive excavating" means excavation using hand tools or equipment that
15 uses air or water pressure as the direct means to break up soil for removal by hand
16 tools or vacuum excavation;
- 17 (14) "Mechanized equipment" means mechanical power equipment, including trenchers,
18 bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows,
19 skidders, and yarders;
- 20 (15) "Normal excavation locate request" means a notification made to a protection
21 notification center where a request for locating utility facilities is processed;
- 22 (16) "Emergency locate request" means a notification made to a protection notification
23 center by an excavator to alert facility owners or operators of the need to begin
24 immediate excavation in response to an emergency;
- 25 (17) "Design information request" means a notification made to a protection notification
26 center by a person providing professional services and making a request in
27 preparation for bidding, preconstruction engineering, or other advance planning

1 efforts. A design information request may not be used for excavation purposes;

2 (18) "Large project **request**" means an area of excavation occurring on or after July 1,
3 2016, measuring more than two thousand (2,000) feet in length. Multiple
4 excavation notifications in an area may be considered together in determining if the
5 excavations are part of a large project;~~and~~

6 (19) "Commission" means the Kentucky Public Service Commission;

7 **(20) "Person" means an individual, an entity, a foreign entity, or other legal or**
8 **commercial entity;**

9 **(21) "Positive response" means an automated or written communication system**
10 **provided by each protection notification center for all locate requests the center**
11 **receives pursuant to Section 2 of this Act that allows excavators, locators,**
12 **operators, and other interested parties to determine the status of locating an**
13 **underground facility and requires response and verification by operators and**
14 **excavators to comply with their respective requirements of the Underground**
15 **Facility Damage Prevention Act of 1994;**

16 **(22) "Unique identification number" or "locate request number" means a unique**
17 **number that any protection notification center or operator pursuant to Section 4**
18 **of this Act has assigned to a locate request for excavation;**

19 **(23) "Locator" means any entity or individual that locates lines or facilities for an**
20 **operator;**

21 **(24) "Second notice" means a notice that is made by an excavator to a notification**
22 **center when an operator has failed to comply with the positive response**
23 **requirements under subsection (5) of Section 2 of this Act;**

24 **(25) "Tolerance zone" means a strip of land at least four (4) feet wide but not wider**
25 **than the width of the underground facility plus two (2) feet on either side of the**
26 **outer limits of the facility;**

27 **(26) "Untonable facility" means an underground facility that cannot be located from**

1 the surface using locating methods which meet industry standards and that
 2 requires additional efforts and extended time; and
 3 (27) "Work site contact" means an individual that will be present at the excavation
 4 site when the excavation will occur.

5 ➔Section 2. KRS 367.4909 is amended to read as follows:

- 6 (1) Each operator shall provide protection notification center access to excavators.
- 7 (2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the
 8 requirement of subsection (1) of this section.
- 9 (3) Each operator member of the Kentucky Contact Center shall provide and update as
 10 needed to the Kentucky Contact Center the general location of its underground
 11 facilities, the operator identity and business address, and emergency notification
 12 telephone numbers.
- 13 (4) Each operator shall report to the commission excavation damage to an underground
 14 facility used in the transportation of gas or hazardous liquid within thirty (30)
 15 calendar days of being informed of the damage. Each report of excavation damage
 16 shall be made by electronic mail or as otherwise prescribed by the commission.
- 17 (5) An operator shall respond to facility locate requests and provide a positive response
 18 as follows:
- 19 (a) To a normal excavation locate request, within two (2) working days after
 20 receiving notification from an excavator or any time prior to the scheduled
 21 excavation start date if agreed upon as provided in subsection (7) of Section
 22 6 of this Act, excluding large project requests, design information requests,
 23 emergency locate requests, and unmapped or untonable facilities[-,
 24 excluding large projects];
- 25 (b) To an emergency locate request, as quickly as possible but not to exceed forty-
 26 eight (48) hours after receiving notification from an excavator;
- 27 (c) To a design information request, within ten (10) working days after receiving

- 1 notification from the person making the request; ~~and~~
- 2 (d) To a large project request, within two (2) working days the operator shall
- 3 notify the excavator that an excavation area has been determined to be a
- 4 large project, and the operator shall respond to the request within five (5)
- 5 working days from the later of receiving notification from an excavator or
- 6 prior to the scheduled excavation start date for that location if agreed upon as
- 7 provided in subsection (7) of Section 6 of this Act; and
- 8 (e) To an unmapped or untonable facility request, within two (2) working days
- 9 the operator shall notify the excavator that an excavation area has been
- 10 determined to be an unmapped or untonable project, and the operator shall
- 11 respond to the request within five (5) working days for a normal locate
- 12 request or eight (8) working days for a large project request from the later
- 13 of receiving notification from an excavator or prior to the scheduled
- 14 excavation start date if agreed upon as provided in subsection (7) of Section
- 15 6 of this Act.
- 16 (6) Within one (1) working day after receiving a second notice request from an
- 17 excavator pursuant to subsection (12) of Section 3 of this Act, an operator shall
- 18 locate its facility and update the positive response system.
- 19 (7) An operator shall, after~~upon~~ receiving an emergency locate request, ~~or~~ a normal
- 20 excavation locate request, an unmapped or untonable locate request, or a large
- 21 project request as provided in subsection (5) of this section:
- 22 (a) Inform the excavator of the approximate location and description of any of the
- 23 operator's underground facilities that may be damaged or pose a safety
- 24 concern because of excavation or demolition;
- 25 (b) ~~Inform the excavator of any other information that would assist in locating~~
- 26 ~~and avoiding contact with or damage to underground facilities;~~
- 27 (c) ~~Unless permanent facility markers are provided, provide temporary markings~~

1 to inform the excavator of the ownership and approximate location of the
2 underground facility; and

3 ~~(c)~~~~(d)~~ **Provide a positive response to the requesting party**~~[Notify the~~
4 ~~requesting party if underground facilities are not in conflict with the~~
5 ~~excavation or demolition].~~

6 ~~(8)~~~~(7)~~ Upon receiving a design information request, an operator shall contact the
7 person making the request within the time period specified in subsection (5) of this
8 section. The operator shall:

9 (a) Designate with temporary underground facility markers the location of all
10 underground facilities owned by the operator within the area of the design
11 information request as defined in KRS 367.4903;

12 (b) Provide to the person making the design information request a description of
13 all underground facilities owned by the operator in the area of the design
14 information request and the location of the facilities, which may include
15 drawings marked with a scale, dimensions, and reference points for
16 underground utilities already built in the area or other facility records that are
17 maintained by the operator; or

18 (c) Allow the person making the design information request or an authorized
19 person to inspect the drawings or other records for all underground facilities
20 with the proposed area of excavation at a location that is acceptable to the
21 operator.

22 ~~(9)~~~~(8)~~ An operator may reject a design information request **and not be held in**
23 **violation of subsection (6) of this section** based upon security considerations or if
24 producing the information will place the operator at a competitive disadvantage,
25 pending the operator obtaining additional information confirming the legitimacy of
26 the notice. The operator shall notify the person making the design information
27 request and may request additional information.

1 ~~(10)~~⁽⁹⁾ Temporary underground facility markers shall consist of paint, chalk, flags,
 2 stakes, or any combination thereof and shall conform to the following standards of
 3 the American Public Works Association uniform color code:

- | | | |
|----|--|-----------------------------------|
| 4 | (a) Electric power distribution and transmission | Safety Red |
| 5 | (b) Municipal electric systems | Safety Red |
| 6 | (c) Gas distribution and transmission | High visibility safety yellow |
| 7 | (d) Oil distribution and transmission | High visibility safety yellow |
| 8 | (e) Dangerous materials, product lines | High visibility safety yellow |
| 9 | (f) Telecommunication systems and cable television | Safety alert orange |
| 10 | (g) Temporary survey markings | Safety pink |
| 11 | (h) Police and fire communications | Safety alert orange |
| 12 | (i) Water systems | Safety precaution blue |
| 13 | (j) Sewer and storm drainage systems | Safety green |
| 14 | (k) Proposed excavation or construction boundaries | White |
| 15 | (l) Reclaimed water, slurry, and irrigation facilities | Purple |
| 16 | <u>(m) Fiber optic and critical telecommunication</u> | <u>Safety alert orange</u> |

17 ~~(11)~~⁽¹⁰⁾ If extraordinary circumstances exist, an operator shall notify the excavator of
 18 the operator's inability to comply with this section. **Notification under this**
 19 **subsection shall temporarily relieve the operator of complying with subsections**
 20 **(5) and (6) of this section until the operator can recover from the extraordinary**
 21 **circumstances.** Extraordinary circumstances include **weather that makes it**
 22 **impossible for any combination of facility markers identified in subsection (10) of**
 23 **this section to be used,** extreme weather conditions, force majeure, disasters, or
 24 civil unrest that make timely response difficult or impossible.

25 ~~(12)~~⁽¹¹⁾ All underground facilities installed after January 1, 2013, shall include a
 26 means to accurately identify and locate the underground facilities from the surface.
 27 This subsection does not apply to the repair of existing facilities.

1 ➔Section 3. KRS 367.4911 is amended to read as follows:

- 2 (1) (a) Each excavator, or person responsible for an excavation, planning
 3 excavation, or demolition work shall, not less than two (2) full working days
 4 nor more than ten (10) full working days prior to commencing work, **unless a**
 5 **future start date is agreed upon as provided in subsection (7) of Section 6 of**
 6 **this Act,** notify each affected **operator's designated protection notification**
 7 **center**~~[operator]~~ of the excavator's intended work and work schedule~~[-~~
 8 ~~Contacting the applicable protection notification centers shall satisfy this~~
 9 ~~requirement].~~
- 10 (b) ~~[An excavator may commence work before]~~The two (2) full working days
 11 provided for in paragraph (a) of this subsection have elapsed if all affected
 12 operators have notified the person~~[that the location of all the affected~~
 13 ~~operators' facilities have been marked or that they have no facilities in the area~~
 14 ~~of the proposed excavation, demolition, or timber harvesting].~~
- 15 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the
 16 initial request.
- 17 (3) Each excavator shall provide each applicable protection notification center with
 18 adequate information regarding:
- 19 (a) **Name and phone number of the excavator or person requesting the**
 20 **underground facility locate;**
- 21 **(b) Approximate location and type of work being performed by the excavator;**
- 22 **(c) Name and phone number of work site contact;**
- 23 **(d) Estimated start date and start time of excavation; and**~~[The name of the~~
 24 ~~individual making the notification;~~
- 25 ~~(b) The excavator's name, address, and a telephone number;~~
- 26 ~~(e)]~~**(e)** The excavation or demolition site location or locations, each of which
 27 shall not exceed **five thousand (5,000)**~~[two thousand (2,000)]~~ feet in length

1 unless the excavator and operator agree to a larger area, the city or
2 community, county and street address, including the nearest cross street[;]

3 ~~(d) The type and extent of excavation or demolition to be performed;~~

4 ~~(e) A contact name and telephone number of the person responsible for the work~~
5 ~~to be performed].~~

6 (4) If more than one (1) excavator will operate at the same site, each excavator shall
7 notify the protection notification centers individually. Notification by an excavator
8 will serve as notification for any of that excavator's employees. Failure by an
9 excavator to notify the protection notification center does not relieve individual
10 employees of responsibility.

11 (5) The excavator shall inform and provide to excavation or demolition site employees:

12 (a) The underground facility location provided by each operator;

13 (b) Any related safety information provided by each operator; and

14 (c) The locate request identification number assigned by each protection
15 notification center.

16 (6) The excavator shall protect and preserve temporary underground facility markers
17 until the scheduled excavation or demolition is completed.

18 (7) If, after the ***response time***~~[two (2) day period]~~ provided by KRS 367.4909(5)~~[(a)]~~,
19 the excavator finds evidence of an unmarked underground facility at the site, he
20 shall immediately notify a[the] protection notification center. ***When an excavator***
21 ***has complied with subsection (1) of this section and evidence of an unmarked***
22 ***underground facility is uncovered, the operator shall have six (6) business hours***
23 ***to identify the underground facility.***

24 (8) The excavator shall contact the protection notification center to request remarking
25 two (2) working days in advance of the expiration of each twenty-one (21) day
26 period while excavation or demolition continues or if:

27 (a) The markings of any underground facility have been removed or are no longer

- 1 visible; or
- 2 (b) The excavator has changed the work plan or location previously filed.
- 3 (9) (a) Each excavator, or entity or individual that is otherwise exempt from the
4 requirements of KRS 367.4901 to 367.4917 under Section 5 of this Act, who
5 conducts or is responsible for any excavation or demolition that results in
6 underground facility damage shall cease excavation or demolition activities
7 and notify all affected operators of the location and nature of the underground
8 facility damage immediately upon discovery of the damage.
- 9 (b) If the underground facility damage causes concern for public or workplace
10 safety, the excavator shall notify appropriate public safety agencies of the
11 location and nature of the safety concern.
- 12 (c) If the underground facility damage results in the escape, or suspected escape
13 of any flammable, toxic, or corrosive gas or liquid, the excavator shall cease
14 excavation or demolition activities and immediately report to the appropriate
15 authorities by calling the 911 emergency telephone number.
- 16 (10) When excavation or demolition is necessary within the tolerance zone ~~[approximate~~
17 ~~location of the underground facility]~~, the excavator shall hand-dig or use
18 nonintrusive means to avoid damage to the underground facility, except that
19 mechanized equipment may be used:
- 20 (a) To remove the pavement or other manmade hard surface if used during the
21 initial penetration only to the depth necessary and if an individual other
22 than the equipment operator visually monitors the excavation activity;
- 23 (b) To remove indigenous rock if used during the initial penetration only to the
24 extent necessary, if an individual other than the equipment operator
25 visually monitors the excavation activity, and if the excavation is planned to
26 avoid damage to the underground facility. However, if the underground
27 facility contains flammable, toxic, corrosive, or hazardous products, the

1 excavator shall notify the facility owner of the excavator's intent prior to
2 removing indigenous rock;

3 (c) To remove materials that are more than twelve (12) inches in any direction
4 from the outer edge of the located facility if the excavator visually identifies
5 the precise location of the underground facility or visually confirms that no
6 facility is present within the depth of the excavation, if an individual other
7 than the equipment operator visually monitors the excavation activity, and
8 if the excavation is planned to avoid damage to the underground facility;
9 and

10 (d) To place shores into an existing excavation or remove shores from an
11 existing excavation.

12 (11) Upon request by an operator or when the proposed excavation location cannot be
13 accurately identified, an excavator shall mark the boundaries of the location to be
14 excavated using the procedure set forth in subsection (10)(k) of Section 2 of this
15 Act~~[KRS 367.4909(9)(k)]~~. After marking the boundaries, the excavator shall
16 contact the protection notification center or centers. The requirements of
17 subsections (5) to (11) of Section 2 of this Act~~[KRS 367.4909(5) to (10)]~~ are
18 reestablished upon the operator receiving notification of this marking from the
19 protection notification center or centers. This marking shall not alter, or relieve the
20 excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

21 (12) If an operator has failed to give a positive response within the timeframes
22 provided in subsection (5) of Section 2 of this Act, the excavator shall submit a
23 second notice to the protection notification center. If one (1) working day after
24 receiving a second notice request as provided in subsection (6) of Section 2 of this
25 Act, the operator has still failed to give a positive response, an excavator that has
26 fully complied with this section shall not be deemed liable for any damages to an
27 underground facility that would have been located if the operator had complied

1 with the operator's duties under Section 2 of this Act, except for damages to a
 2 person or an underground facility due to negligence or intentional misconduct of
 3 an excavator. This subsection shall not apply to any underground facility used to
 4 transport gas or hazardous liquid subject to the federal pipeline safety laws, 49
 5 U.S.C. secs. 60101 et seq.

6 → Section 4. KRS 367.4913 is amended to read as follows:

7 (1) ~~All~~~~Each~~ protection notification ~~centers~~~~center~~ shall:

8 (a) Provide locate request services during working days and provide an
 9 emergency contact number for incidents occurring outside the working
 10 day~~[Operate the protection notification center during all working days];~~

11 (b) Provide a positive response system for excavators, locators, operators, and
 12 other interested parties to determine the status of locating an underground
 13 facility;

14 (c) Provide any excavation request with an identification number and the
 15 names of the facility owners or operators who will be notified for each
 16 locate request~~[Provide a locate request identification number to the excavator~~
 17 ~~for each excavation or demolition location request];~~

18 ~~(d)~~~~(e)~~ Promptly after receiving an excavation or demolition work notification
 19 from an excavator, provide to each of its affected operator members the
 20 excavator information required by KRS 367.4911(3);

21 ~~(e)~~~~(d)~~ Maintain a list of all its operator members~~[member's identities]~~, their
 22 business addresses~~[address]~~ and their business and emergency telephone
 23 numbers and provide~~[record]~~ this information in accordance with KRS 64.012
 24 with the county clerk of each county where the operator member has
 25 underground facilities. The county clerk shall provide this information upon
 26 request for the actual cost of providing a copy, to be paid by the requesting
 27 party to the county clerk. The county clerk shall assume no liability associated

1 with the receipt of this information from the protection notification center or
2 for subsequent provision of this same information to the requesting party;

3 ~~(f)(e)~~ Make the operator members information list available to any person for
4 inspection at its place of business without charge or provide a copy of the list
5 to any person for any county upon request for a fee not to exceed the actual
6 cost of providing a copy;

7 ~~(g)(f)~~ Define and adopt policies and procedures for processing design
8 information requests;~~and~~

9 ~~(h)(g)~~ Provide the person making a design information request a list of
10 identified operators that will receive notification and notify those operators;

11 **(i) Maintain the following information provided by excavators for all requests**
12 **to locate facilities for at least five (5) years from the date of the request:**

13 **1. Name and phone number of the excavator or person requesting the**
14 **underground facility locate;**

15 **2. Location and type of work being performed by the excavator;**

16 **3. Name and phone number of work site contact;**

17 **4. Name, address, and phone number of underground facility operators;**

18 **and**

19 **5. Estimated start date and start time of excavation;**

20 **(j) Provide contact information for the protection notification center on its**
21 **Web site or pursuant to paragraph (e) of this subsection; and**

22 **(k) Provide public awareness education and damage prevention programs in**
23 **the manner and amount determined by each protection notification center.**

24 (2) The Kentucky Contact Center shall be governed by a board of directors ~~composed~~
25 ~~of representatives of member operators~~ who are elected by the membership. Board
26 seats **shall be composed of no more than twenty-one (21) voting members and six**
27 **(6) nonvoting members and** may be filled by representatives of the following:

- 1 (a) A natural gas provider;
- 2 (b) An electric provider;
- 3 (c) A telecommunications provider;
- 4 (d) A water/sewer provider;
- 5 (e) An interstate pipeline operator;
- 6 (f) A municipal utility operator;~~and~~
- 7 (g) **A commercial excavator;**
- 8 **(h) An oil and gas operator; and**
- 9 **(j) At least one (1) but not more than six (6) advisory, nonvoting members**
- 10 **representing the following:**
- 11 **1. Public Service Commission;**
- 12 **2. Kentucky Transportation Cabinet;**
- 13 **3. Home Builders Association of Kentucky;**
- 14 **4. National Electric Contractors Association;**
- 15 **5. Associated General Contractors of Kentucky; or**
- 16 **6. Kentucky Association of Master Contractors**~~[An advisory, nonvoting~~
- 17 ~~representative of one (1) of the following:~~
- 18 ~~1.— Home Builders Association of Kentucky;~~
- 19 ~~2.— National Electrical Contractors Association;~~
- 20 ~~3.— Associated General Contractors of Kentucky; or~~
- 21 ~~4.— Kentucky Association of Plumbing, Heating-Cooling Contractors].~~
- 22 (3) **Nonvoting members shall be elected by a majority of the voting members and**
- 23 **shall serve for one (1) year terms which expire on December 31. Nonvoting**
- 24 **members are eligible for reappointment by a majority of the voting members.**
- 25 **(4)** The Kentucky Contact Center's board of directors shall establish the method to
- 26 calculate the cost of service provided by the center.
- 27 **(5)**~~(4)~~ The Kentucky Contact Center shall serve all Kentucky counties.

1 ➔Section 5. KRS 367.4915 is amended to read as follows:

2 *Except for the provisions of subsection (9) of Section 3 of this Act, the*~~[The]~~

3 requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

- 4 (1) Excavation by an operator on its own easement except where that easement is
5 crossed by another operator's facilities;
- 6 (2) Routine road maintenance or railroad maintenance or repairs;
- 7 (3) Tilling of soil for agricultural purposes;
- 8 (4) Excavators excavating on private property, using nonmechanized equipment, if
9 there is no encroachment on any operator's right-of-way or easement;
- 10 (5) The opening of a grave in a cemetery;
- 11 (6) A solid waste disposal site which is properly permitted;
- 12 (7) Coal mining operations which are currently regulated under KRS Chapter 350;
- 13 (8) A utility operator or utility operator subcontractor performing emergency work as
14 defined in KRS 367.4903;
- 15 (9) Leak migration testing using metal probes inserted by hand by an authorized
16 representative of the operator;~~[-or]~~
- 17 (10) Any nonintrusive excavating performed by an operator or his subcontractor to
18 locate the operator's underground facilities in response to a notice of excavation
19 from the notification center, if all reasonable precautions have been taken to protect
20 the underground facilities; *or*
- 21 *(11) Nonintrusive excavating to inspect or perform maintenance for an existing utility*
22 *pole.*

23 ➔Section 6. KRS 367.4917 is amended to read as follows:

- 24 (1) An excavator who fails to comply with any provision of KRS 367.4911, or an
25 operator who fails to comply with any provision of KRS 367.4909~~[-, shall be guilty~~
26 ~~of endangering underground facilities and]~~ may be subject to a *civil penalty*~~[fine]~~ of
27 two hundred~~[- and]~~ fifty dollars (\$250) for the first *violation*~~[offense]~~, no more than

1 one thousand dollars (\$1,000) for the second violation~~[offense within one (1) year,]~~
2 and no more than three thousand dollars (\$3,000) for the third and any subsequent
3 violation. A violation shall be considered a first violation under this subsection if
4 more than three hundred sixty-five (365) days have elapsed since the last incident
5 attributable to a person in violation of Section 2 or Section 3 of this Act. If a
6 person commits a violation in the course and scope of employment, the penalties
7 shall be imposed on the employer~~[offense].~~

8 (2) A protection notification center that fails to comply with any provision of KRS
9 367.4913 shall be subject to a civil penalty~~[fine]~~ of one thousand dollars (\$1,000)
10 for each violation~~[offense].~~

11 (3) A person that knowingly provides false notice to a utility notification center of an
12 emergency as defined in KRS 367.4903 shall be subject to a civil penalty~~[fine]~~ of
13 one thousand dollars (\$1,000) for each violation~~[offense].~~

14 (4) Any person who violates any provision of the Underground Facility Damage
15 Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a
16 facility containing any flammable, toxic, corrosive, or hazardous material or results
17 in the release of any flammable, toxic, corrosive, or hazardous material shall be
18 subject to a civil penalty, in addition to the civil penalty in subsection (1) of this
19 section,~~[fine]~~ not to exceed one thousand dollars (\$1,000) for each
20 violation~~[offense].~~ The penalties of this subsection are not in conflict with and are
21 in addition to civil damages for personal injury or property damage.

22 (5) (a) Except as provided in subsection (6) of this section, all civil penalties~~[fines]~~
23 recovered for a violation of this section shall be paid to the general fund of the
24 state, county, city, or fire protection agency which issued the citation.

25 (b) In the event that more than one (1) government agency was involved, the court
26 shall direct an apportionment of the civil penalties~~[fines].~~

27 (c) Failure to comply with the provisions of the Underground Facility Damage

1 Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at the
2 conclusion of an investigation and shall be based on evidence available to
3 state, county, or city officials, law enforcement, or fire protection agencies
4 which issue the citation.

5 (6) The commission shall have statewide authority to enforce and assess civil penalties
6 provided for in this section and to seek injunctive relief for any violation that results
7 in damage to an underground facility used to transport gas or hazardous liquid
8 subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. Once the
9 commission initiates an investigation or undertakes an enforcement action against a
10 person for an alleged violation, no other state, county, city, or fire protection agency
11 shall initiate or continue any enforcement action against the person for the same
12 alleged violation. Any action to recover penalties assessed pursuant to this
13 subsection shall be brought in the Franklin Circuit Court. All penalties recovered by
14 the commission shall be paid into the State Treasury and credited to the account of
15 the commission.

16 (7) *The commission shall make available on its Web site a written agreement form*
17 *for an operator and an excavator to agree to a date or series of dates by which*
18 *time the locate request must be completed if different from those dates established*
19 *in Section 2 of this Act. The form shall contain but is not limited to the parties'*
20 *names, the locate request number, the date requested, and the location. The*
21 *parties shall make the executed agreement form available upon request of the*
22 *commission.*

23 (8) The commission may promulgate administrative regulations in accordance with
24 KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of
25 1994. The commission shall exercise its authority under the Underground Facility
26 Damage Prevention Act of 1994 in accordance with the rules and procedures set
27 forth in KRS Chapter 278 and all applicable administrative regulations promulgated

1 by the commission.

2 →Section 7. This Act takes effect January 1, 2022.