

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;

3 (27) "Work site contact" means an individual that will be present at the excavation  
 4 site when the excavation will occur; and

5 (28) "Fiber-to-the-premises" means a service that provides network connectivity  
 6 between a location and a subscriber using fiber.

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

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

- 1 eight (48) hours after receiving notification from an excavator;
- 2 (c) To a design information request, within ten (10) working days after receiving  
3 notification from the person making the request;~~and~~
- 4 (d) To a large project request, within two (2) working days the operator shall  
5 notify the excavator that an excavation area has been determined to be a  
6 large project, and the operator shall respond to the request within five (5)  
7 working days from the later of receiving notification from an excavator or  
8 prior to the scheduled excavation start date for that location if agreed upon as  
9 provided in subsection (7) of Section 6 of this Act;
- 10 (e) To an unmapped or untonable facility request, within two (2) working days  
11 the operator shall notify the excavator that an excavation area has been  
12 determined to be an unmapped or untonable project, and the operator shall  
13 respond to the request within five (5) working days for a normal locate  
14 request or eight (8) working days for a large project request from the later  
15 of receiving notification from an excavator or prior to the scheduled  
16 excavation start date if agreed upon as provided in subsection (7) of Section  
17 6 of this Act; and
- 18 (f) To a fiber-to-the-premises broadband deployment excavation request, in  
19 locations not already served by fiber-to-the-premises, within four (4)  
20 working days.
- 21 (6) Within one (1) working day after receiving a second notice request from an  
22 excavator pursuant to subsection (12) of Section 3 of this Act, an operator shall  
23 locate its facility and update the positive response system.
- 24 (7) An operator shall, ~~after~~~~upon~~ receiving an emergency locate request, ~~or~~ a normal  
25 excavation locate request, an unmapped or untonable locate request, or a large  
26 project request as provided in subsection (5) of this section:
- 27 (a) Inform the excavator of the approximate location and description of any of the

1 operator's **underground** facilities that may be damaged or pose a safety  
2 concern because of excavation or demolition;

3 (b) ~~[Inform the excavator of any other information that would assist in locating  
4 and avoiding contact with or damage to underground facilities;~~

5 ~~(c)~~ Unless permanent facility markers are provided, provide temporary markings  
6 to inform the excavator of the ownership and approximate location of the  
7 underground facility; and

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

11 ~~(8)~~~~(7)~~ Upon receiving a design information request, an operator shall contact the  
12 person making the request within the time period specified in subsection (5) of this  
13 section. The operator shall:

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

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

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

27 ~~(9)~~~~(8)~~ An operator may reject a design information request **and not be held in**

1 violation of subsection (6) of this section based upon security considerations or if  
 2 producing the information will place the operator at a competitive disadvantage,  
 3 pending the operator obtaining additional information confirming the legitimacy of  
 4 the notice. The operator shall notify the person making the design information  
 5 request and may request additional information.

6 ~~(10)~~~~(9)~~ Temporary underground facility markers shall consist of paint, chalk, flags,  
 7 stakes, or any combination thereof and shall conform to the following standards of  
 8 the American Public Works Association uniform color code:

- |    |                                                        |                               |
|----|--------------------------------------------------------|-------------------------------|
| 9  | (a) Electric power distribution and transmission       | Safety Red                    |
| 10 | (b) Municipal electric systems                         | Safety Red                    |
| 11 | (c) Gas distribution and transmission                  | High visibility safety yellow |
| 12 | (d) Oil distribution and transmission                  | High visibility safety yellow |
| 13 | (e) Dangerous materials, product lines                 | High visibility safety yellow |
| 14 | (f) Telecommunication systems and cable television     | Safety alert orange           |
| 15 | (g) Temporary survey markings                          | Safety pink                   |
| 16 | (h) Police and fire communications                     | Safety alert orange           |
| 17 | (i) Water systems                                      | Safety precaution blue        |
| 18 | (j) Sewer and storm drainage systems                   | Safety green                  |
| 19 | (k) Proposed excavation or construction boundaries     | White                         |
| 20 | (l) Reclaimed water, slurry, and irrigation facilities | Purple                        |
| 21 | <u>(m) Fiber optic and critical telecommunication</u>  | <u>Safety alert orange</u>    |

22 ~~(11)~~~~(10)~~ If extraordinary circumstances exist, an operator shall notify the excavator of  
 23 the operator's inability to comply with this section. Notification under this  
 24 subsection shall temporarily relieve the operator of complying with subsections  
 25 (5) and (6) of this section until the operator can recover from the extraordinary  
 26 circumstances. Extraordinary circumstances include weather that makes it  
 27 impossible for any combination of facility markers identified in subsection (10) of



1 *this section to be used*, extreme weather conditions, force majeure, disasters, or  
 2 civil unrest that make timely response difficult or impossible.

3 ~~(12)~~~~(11)~~ All underground facilities installed after January 1, 2013, shall include a  
 4 means to accurately identify and locate the underground facilities from the surface.  
 5 This subsection does not apply to the repair of existing facilities.

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

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

1            *deployment excavation;*

2            *(c) Name and phone number of work site contact;*

3            *(d) Estimated start date and start time of excavation; and* ~~The name of the~~  
4            ~~individual making the notification;~~

5            ~~(b) The excavator's name, address, and a telephone number;~~

6            ~~(e)~~ *(e)*     The excavation or demolition site location or locations, each of which  
7            shall not exceed *five thousand (5,000)* ~~two thousand (2,000)~~ feet in length  
8            unless the excavator and operator agree to a larger area, the city or  
9            community, county and street address, including the nearest cross street;

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

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

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

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

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

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

21            (c) The locate request identification number assigned by each protection  
22            notification center.

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

25          (7) If, after the *response time* ~~two (2) day period~~ provided by KRS 367.4909(5) ~~(a)~~,  
26          the excavator finds evidence of an unmarked underground facility at the site, he  
27          shall immediately notify *a* ~~the~~ protection notification center. *When an excavator*

1 has complied with subsection (1) of this section and evidence of an unmarked  
2 underground facility is uncovered, the operator shall have six (6) business hours  
3 to identify the underground facility.

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

7 (a) The markings of any underground facility have been removed or are no longer  
8 visible; or

9 (b) The excavator has changed the work plan or location previously filed.

10 (9) (a) Each excavator who conducts or is responsible for any excavation or  
11 demolition that results in underground facility damage shall cease excavation or  
12 demolition activities and notify all affected operators of the location and  
13 nature of the underground facility damage immediately upon discovery of the  
14 damage.

15 (b) Any entity or individual that is otherwise exempt from the requirements of  
16 KRS 367.4901 to 367.4917 under Section 5 of this Act, who conducts or is  
17 responsible for any excavation or demolition that damages an underground  
18 facility that results in the escape of any flammable, toxic, or corrosive gas or  
19 liquid shall cease excavation or demolition activities and notify all affected  
20 operators of the location and nature of the underground facility damage.

21 (c) If the underground facility damage causes concern for public or workplace  
22 safety, the excavator shall notify appropriate public safety agencies of the  
23 location and nature of the safety concern.

24 ~~(d)~~(e) If the underground facility damage results in the escape, or suspected  
25 escape of any flammable, toxic, or corrosive gas or liquid, the excavator shall  
26 cease excavation or demolition activities and immediately report to the  
27 appropriate authorities by calling the 911 emergency telephone number.

- 1 (10) When excavation or demolition is necessary within the tolerance zone~~[approximate~~  
2 ~~location of the underground facility]~~, the excavator shall hand-dig or use  
3 nonintrusive means to avoid damage to the underground facility, except that  
4 mechanized equipment may be used:
- 5 (a) To remove the pavement or other manmade hard surface if used during the  
6 initial penetration only to the depth necessary and if an individual other  
7 than the equipment operator visually monitors the excavation activity;
- 8 (b) To remove indigenous rock if used during the initial penetration only to the  
9 extent necessary, if an individual other than the equipment operator  
10 visually monitors the excavation activity, and if the excavation is planned to  
11 avoid damage to the underground facility. However, if the underground  
12 facility contains flammable, toxic, corrosive, or hazardous products, the  
13 excavator shall notify the facility owner of the excavator's intent prior to  
14 removing indigenous rock;
- 15 (c) To remove materials that are more than twelve (12) inches in any direction  
16 from the outer edge of the located facility if the excavator visually identifies  
17 the precise location of the underground facility or visually confirms that no  
18 facility is present within the depth of the excavation, if an individual other  
19 than the equipment operator visually monitors the excavation activity, and  
20 if the excavation is planned to avoid damage to the underground facility;  
21 and
- 22 (d) To place shores into an existing excavation or remove shores from an  
23 existing excavation.
- 24 (11) Upon request by an operator or when the proposed excavation location cannot be  
25 accurately identified, an excavator shall mark the boundaries of the location to be  
26 excavated using the procedure set forth in subsection (10)(k) of Section 2 of this  
27 Act~~[KRS 367.4909(9)(k)]~~. After marking the boundaries, the excavator shall

1 contact the protection notification center or centers. The requirements of  
 2 subsections (5) to (11) of Section 2 of this Act~~[KRS 367.4909(5) to (10)]~~ are  
 3 reestablished upon the operator receiving notification of this marking from the  
 4 protection notification center or centers. This marking shall not alter, or relieve the  
 5 excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

6 (12) If an operator has failed to give a positive response within the timeframes  
 7 provided in subsection (5) of Section 2 of this Act, the excavator shall submit a  
 8 second notice to the protection notification center. If one (1) working day after  
 9 receiving a second notice request as provided in subsection (6) of Section 2 of this  
 10 Act, the operator has still failed to give a positive response, an excavator that has  
 11 fully complied with this section shall not be deemed liable for any damages to an  
 12 underground facility that would have been located if the operator had complied  
 13 with the operator's duties under Section 2 of this Act, except for damages to a  
 14 person or an underground facility due to negligence or intentional misconduct of  
 15 an excavator. This subsection shall not apply to any underground facility used to  
 16 transport gas or hazardous liquid subject to the federal pipeline safety laws, 49  
 17 U.S.C. secs. 60101 et seq.

18 ➔Section 4. KRS 367.4913 is amended to read as follows:

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

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

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

26 (c) Provide any excavation request with an identification number and the  
 27 names of the facility owners or operators who will be notified for each

1           ~~**locate request**~~ [Provide a locate request identification number to the excavator  
2           for each excavation or demolition location request];

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

6           ~~(e)~~ [(d)]     Maintain a list of all its operator ~~**members**~~ [member's identities], ~~**their**~~  
7           business ~~**addresses**~~ [address] and ~~**their**~~ business and emergency telephone  
8           numbers and ~~**provide**~~ [record] this information in accordance with KRS 64.012  
9           with the county clerk of each county where the operator member has  
10          underground facilities. The county clerk shall provide this information upon  
11          request for the actual cost of providing a copy, to be paid by the requesting  
12          party to the county clerk. The county clerk shall assume no liability associated  
13          with the receipt of this information from the protection notification center or  
14          for subsequent provision of this same information to the requesting party;

15          ~~(f)~~ [(e)]     Make the operator members information list available to any person for  
16          inspection at its place of business without charge or provide a copy of the list  
17          to any person for any county upon request for a fee not to exceed the actual  
18          cost of providing a copy;

19          ~~(g)~~ [(f)]     Define and adopt policies and procedures for processing design  
20          information requests; ~~and~~

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

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

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

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

- 1           **3. Name and phone number of work site contact;**
- 2           **4. Name, address, and phone number of underground facility operators;**
- 3                   **and**
- 4           **5. Estimated start date and start time of excavation;**
- 5           **(j) Provide contact information for the protection notification center on its**
- 6                   **Web site or pursuant to paragraph (e) of this subsection; and**
- 7           **(k) Provide public awareness education and damage prevention programs in**
- 8                   **the manner and amount determined by each protection notification center.**
- 9       (2) The Kentucky Contact Center shall be governed by a board of directors ~~composed~~
- 10       ~~of representatives of member operators~~ who are elected by the membership. Board
- 11       seats **shall be composed of no more than twenty-one (21) voting members and six**
- 12       **(6) nonvoting members and** may be filled by representatives of the following:
- 13       (a) A natural gas provider;
- 14       (b) An electric provider;
- 15       (c) A telecommunications provider;
- 16       (d) A water/sewer provider;
- 17       (e) An interstate pipeline operator;
- 18       (f) A municipal utility operator;~~and~~
- 19       (g) **A commercial excavator;**
- 20       **(h) An oil and gas operator; and**
- 21       **(j) At least one (1) but not more than six (6) advisory, nonvoting members**
- 22                   **representing the following:**
- 23                   **1. Public Service Commission;**
- 24                   **2. Kentucky Transportation Cabinet;**
- 25                   **3. Home Builders Association of Kentucky;**
- 26                   **4. National Electric Contractors Association;**
- 27                   **5. Associated General Contractors of Kentucky; or**

- 1                    **6. Kentucky Association of Master Contractors**~~[An advisory, nonvoting~~  
 2                    representative of one (1) of the following:  
 3                    1.— Home Builders Association of Kentucky;  
 4                    2.— National Electrical Contractors Association;  
 5                    3.— Associated General Contractors of Kentucky; or  
 6                    4.— Kentucky Association of Plumbing, Heating-Cooling Contractors].

7                    (3) **Nonvoting members shall be elected by a majority of the voting members and**  
 8                    **shall serve for one (1) year terms which expire on December 31. Nonvoting**  
 9                    **members are eligible for reappointment by a majority of the voting members.**

10                  (4) The Kentucky Contact Center's board of directors shall establish the method to  
 11                  calculate the cost of service provided by the center.

12                  (5)~~((4))~~ The Kentucky Contact Center shall serve all Kentucky counties.

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

14                  **Except for the provisions of subsection (9) of Section 3 of this Act, the**~~[The]~~  
 15                  requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

- 16                  (1) Excavation by an operator on its own easement except where that easement is  
 17                  crossed by another operator's facilities;  
 18                  (2) Routine road maintenance or railroad maintenance or repairs;  
 19                  (3) Tilling of soil for agricultural purposes;  
 20                  (4) Excavators excavating on private property, using nonmechanized equipment, if  
 21                  there is no encroachment on any operator's right-of-way or easement;  
 22                  (5) The opening of a grave in a cemetery;  
 23                  (6) A solid waste disposal site which is properly permitted;  
 24                  (7) Coal mining operations which are currently regulated under KRS Chapter 350;  
 25                  (8) A utility operator or utility operator subcontractor performing emergency work as  
 26                  defined in KRS 367.4903;  
 27                  (9) Leak migration testing using metal probes inserted by hand by an authorized



1 representative of the operator;~~[-or]~~

2 (10) Any nonintrusive excavating performed by an operator or his subcontractor to  
3 locate the operator's underground facilities in response to a notice of excavation  
4 from the notification center, if all reasonable precautions have been taken to protect  
5 the underground facilities; or

6 **(11) Nonintrusive excavating to inspect or perform maintenance for an existing utility**  
7 **pole.**

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

9 (1) An excavator who fails to comply with any provision of KRS 367.4911, or an  
10 operator who fails to comply with any provision of KRS 367.4909~~[-, shall be guilty~~  
11 ~~of endangering underground facilities and]~~ may be subject to a **civil penalty**~~[fine]~~ of  
12 two hundred~~[- and]~~ fifty dollars (\$250) for the first **violation**~~[offense]~~, no more than  
13 one thousand dollars (\$1,000) for the second **violation**~~[offense within one (1) year,]~~  
14 and no more than three thousand dollars (\$3,000) for the third and any subsequent  
15 **violation. A violation shall be considered a first violation under this subsection if**  
16 **more than three hundred sixty-five (365) days have elapsed since the last incident**  
17 **attributable to a person in violation of Section 2 or Section 3 of this Act. If a**  
18 **person commits a violation in the course and scope of employment, the penalties**  
19 **shall be imposed on the employer**~~[offense].~~

20 (2) A protection notification center that fails to comply with any provision of KRS  
21 367.4913 shall be subject to a **civil penalty**~~[fine]~~ of one thousand dollars (\$1,000)  
22 for each **violation**~~[offense].~~

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

26 (4) Any person who violates any provision of the Underground Facility Damage  
27 Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a

1 facility containing any flammable, toxic, corrosive, or hazardous material or results  
2 in the release of any flammable, toxic, corrosive, or hazardous material shall be  
3 subject to a **civil penalty, in addition to the civil penalty in subsection (1) of this**  
4 **section,**~~[fine]~~ not to exceed one thousand dollars (\$1,000) for each  
5 **violation**~~[offense]~~. The penalties of this subsection are not in conflict with and are  
6 in addition to civil damages for personal injury or property damage.

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

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

12 (c) Failure to comply with the provisions of the Underground Facility Damage  
13 Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at the  
14 conclusion of an investigation and shall be based on evidence available to  
15 state, county, or city officials, law enforcement, or fire protection agencies  
16 which issue the citation.

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

- 1 (7) *The commission shall make available on its Web site a written agreement form*  
2 *for an operator and an excavator to agree to a date or series of dates by which*  
3 *time the locate request must be completed if different from those dates established*  
4 *in Section 2 of this Act. The form shall contain but is not limited to the parties'*  
5 *names, the locate request number, the date requested, and the location. The*  
6 *parties shall make the executed agreement form available upon request of the*  
7 *commission.*
- 8 (8) The commission may promulgate administrative regulations in accordance with  
9 KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of  
10 1994. The commission shall exercise its authority under the Underground Facility  
11 Damage Prevention Act of 1994 in accordance with the rules and procedures set  
12 forth in KRS Chapter 278 and all applicable administrative regulations promulgated  
13 by the commission.
- 14 ➔Section 7. This Act takes effect January 1, 2022.