

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;
- 22 (6) "Excavation" means any activity that results in the movement, placement, probing,
23 boring, or removal of earth, rock, or other material in or on the ground by the use of
24 any tools or equipment, by the discharge of explosives, or by the harvesting of
25 timber using mechanized equipment. Forms of excavating include but are not
26 limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling,
27 pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by

1 use of hand tools to a depth of six (6) inches or less below existing grade shall not
2 constitute excavation;

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

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

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

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

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

23 (a) For underground metallic facilities and underground nonmetallic facilities
24 with metallic tracer wire, a distance not to exceed the combined width of the
25 underground facility plus eighteen (18) inches measured from the outer edge
26 of each side of the underground facility; or

27 (b) For nonmetallic facilities without metallic tracer wire, the underground

1 facility shall be located as accurately as possible from field location records
2 and shall require notification from the operator of the inability to accurately
3 locate the facility;

4 (12) "Working day" means a twenty-four (24) hour period commencing from the time of
5 receipt of the notification by the Kentucky Contact Center except Saturday, Sunday,
6 and holidays established by federal or state statute;

7 (13) "Nonintrusive excavating" means excavation using hand tools or equipment that
8 uses air or water pressure as the direct means to break up soil for removal by hand
9 tools or vacuum excavation;

10 (14) "Mechanized equipment" means mechanical power equipment, including trenchers,
11 bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows,
12 skidders, and yarders;

13 (15) "Normal excavation locate request" means a notification made to a protection
14 notification center where a request for locating utility facilities is processed;

15 (16) "Emergency locate request" means a notification made to a protection notification
16 center by an excavator to alert facility owners or operators of the need to begin
17 immediate excavation in response to an emergency;

18 (17) "Design information request" means a notification made to a protection notification
19 center by a person providing professional services and making a request in
20 preparation for bidding, preconstruction engineering, or other advance planning
21 efforts. A design information request may not be used for excavation purposes;

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

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

27 **(20) "Positive response" means an automated or written communication system**

1 provided by any protection notification center or operator pursuant to Section 2
 2 of this Act that allows excavators, locators, operators, and other interested parties
 3 to determine the status of locating an underground facility and requires response
 4 and verification by operators and excavators to comply with their respective
 5 requirements under the Underground Facility Damage Prevention Act of 1994;
 6 (21) "Unique identification number" or "locate request number" means a unique
 7 number that any protection notification center or operator pursuant to Section 4
 8 of this Act has assigned to a locate request for excavation; and
 9 (22) "Locator" means any entity or individual that locates lines or facilities for an
 10 operator.

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

- 12 (1) Each operator shall provide protection notification center access to excavators.
- 13 (2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the
 14 requirement of subsection (1) of this section.
- 15 (3) Each operator member of the Kentucky Contact Center shall provide and update as
 16 needed to the Kentucky Contact Center the general location of its underground
 17 facilities, the operator identity and business address, and emergency notification
 18 telephone numbers.
- 19 (4) Each operator shall report to the commission excavation damage to an underground
 20 facility used in the transportation of gas or hazardous liquid within thirty (30)
 21 calendar days of being informed of the damage. Each report of excavation damage
 22 shall be made by electronic mail or as otherwise prescribed by the commission.
- 23 (5) An operator shall respond to facility locate requests and update the positive
 24 response system as follows:
- 25 (a) To a normal excavation locate request, within two (2) working days after
 26 receiving notification from an excavator, 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 five (5) working days from the later of
5 receiving notification from an excavator or the scheduled excavation start date
6 for that location.
- 7 (6) An operator shall, upon receiving an emergency locate request or a normal
8 excavation locate request:
- 9 (a) Inform the excavator of the approximate location and description of any of the
10 operator's facilities that may be damaged or pose a safety concern because of
11 excavation or demolition;
- 12 (b) Inform the excavator of any other information that would assist in locating
13 and avoiding contact with or damage to underground facilities;
- 14 (c) Unless permanent facility markers are provided, provide temporary markings
15 to inform the excavator of the ownership and approximate location of the
16 underground facility; and
- 17 (d) Notify the requesting party if underground facilities are not in conflict with the
18 excavation or demolition.
- 19 (7) Upon receiving a design information request, an operator shall contact the person
20 making the request within the time period specified in subsection (5) of this section.
21 The operator shall:
- 22 (a) Designate with temporary underground facility markers the location of all
23 underground facilities owned by the operator within the area of the design
24 information request as defined in KRS 367.4903;
- 25 (b) Provide to the person making the design information request a description of
26 all underground facilities owned by the operator in the area of the design
27 information request and the location of the facilities, which may include

1 drawings marked with a scale, dimensions, and reference points for
 2 underground utilities already built in the area or other facility records that are
 3 maintained by the operator; or

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

8 (8) An operator may reject a design information request based upon security
 9 considerations or if producing the information will place the operator at a
 10 competitive disadvantage, pending the operator obtaining additional information
 11 confirming the legitimacy of the notice. The operator shall notify the person making
 12 the design information request and may request additional information.

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

16	(a) Electric power distribution and transmission	Safety Red
17	(b) Municipal electric systems	Safety Red
18	(c) Gas distribution and transmission	High visibility safety yellow
19	(d) Oil distribution and transmission	High visibility safety yellow
20	(e) Dangerous materials, product lines	High visibility safety yellow
21	(f) Telecommunication systems and cable television	Safety alert orange
22	(g) Temporary survey markings	Safety pink
23	(h) Police and fire communications	Safety alert orange
24	(i) Water systems	Safety precaution blue
25	(j) Sewer and storm drainage systems	Safety green
26	(k) Proposed excavation or construction boundaries	White
27	(l) Reclaimed water, slurry, and irrigation facilities	Purple

1 (10) If extraordinary circumstances exist, an operator shall notify the excavator of the
2 operator's inability to comply with this section. Extraordinary circumstances include
3 extreme weather conditions, force majeure, disasters, or civil unrest that make
4 timely response difficult or impossible.

5 (11) **An operator that has received a written or automated communication regarding a**
6 **request to locate its underground facility from any notification center shall**
7 **provide a positive response to document the status of marking the approximate**
8 **location of the operator's underground facilities pursuant to the Underground**
9 **Facility Damage Prevention Act of 1994.**

10 (12) **If an excavator has received a positive response from an operator of an**
11 **underground facility that transports gas or hazardous liquids or transmits**
12 **electricity that the operator requires additional time due to a reason outside of an**
13 **extraordinary circumstance listed in subsection (10) of this section, the excavator**
14 **shall work with the operator to establish a timeframe in which the underground**
15 **facility will be located not to exceed one (1) week. The excavator shall not proceed**
16 **with excavation until after the agreed-upon timeframe.**

17 (13) All underground facilities installed after January 1, 2013, shall include a means to
18 accurately identify and locate the underground facilities from the surface. This
19 subsection does not apply to the repair of existing facilities.

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

21 (1) (a) Each excavator, or person responsible for an excavation, planning excavation
22 or demolition work shall, not less than two (2) full working days nor more
23 than ten (10) full working days prior to commencing work, notify each
24 affected operator of the excavator's intended work and work schedule.
25 Contacting the applicable protection notification centers shall satisfy this
26 requirement.

27 (b) An excavator may commence work before the two (2) full working days

1 provided for in paragraph (a) of this subsection have elapsed if all affected
2 operators have notified the excavator~~[person]~~ that the approximate location
3 of all the affected operators' facilities have been marked or that they have no
4 facilities in the area of the proposed excavation, demolition, or timber
5 harvesting.

6 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the
7 initial request.

8 (3) Each excavator shall provide each applicable protection notification center with
9 adequate information regarding:

10 (a) The name of the individual making the notification;

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

12 (c) The excavation or demolition site location or locations, each of which shall
13 not exceed two thousand (2,000) feet in length unless the excavator and
14 operator agree to a larger area, the city or community, county and street
15 address, including the nearest cross street;

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

17 (e) A contact name and telephone number of the person responsible for the work
18 to be performed.

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

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

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

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

27 (c) The locate request identification number assigned by each protection

1 notification center.

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

4 (7) If, after the **expiration of the time period for an operator to respond to a facility**
5 **locate request as**~~[two (2) day period]~~ provided **in subsection (5) of Section 2 of**
6 **this Act**~~[by KRS 367.4909(5)(a)]~~, the excavator finds evidence of an unmarked
7 underground facility at the site, he **or she** shall immediately notify the protection
8 notification center **through its positive response system, and the operator shall**
9 **have six (6) hours to identify the underground facility. After the six (6) hour time**
10 **period, the excavator shall not begin excavation until verifying that the operators**
11 **of underground facilities transporting gas or hazardous liquids or transmitting**
12 **electricity have provided positive responses as required by subsection (20) of**
13 **Section 1 of this Act. If an operator of an underground facility other than one**
14 **transporting gas or hazardous liquids or transmitting electricity fails to respond**
15 **to locate requests and to update the positive response system pursuant to**
16 **subsection (5) of Section 2 of this Act, the excavator or person involved in**
17 **overseeing the excavation, planning the excavation, or planning demolition work**
18 **shall not be deemed liable for any damages resulting from the failure of the**
19 **operator to comply with its duties set forth in Section 2 of this Act.**

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

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

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

26 (9) (a) Each excavator who conducts or is responsible for any excavation or
27 demolition that results in underground facility damage shall cease excavation

1 or demolition activities and notify all affected operators of the location and
2 nature of the underground facility damage.

3 (b) If the underground facility damage causes concern for public or workplace
4 safety, the excavator shall notify appropriate public safety agencies of the
5 location and nature of the safety concern.

6 (c) If the underground facility damage results in the escape of any flammable,
7 toxic, or corrosive gas or liquid, the excavator shall cease excavation or
8 demolition activities and immediately report to the appropriate authorities by
9 calling the 911 emergency telephone number.

10 (10) When excavation or demolition is necessary within the approximate location of the
11 underground facility, the excavator shall hand-dig or use nonintrusive means to
12 avoid damage to the underground facility.

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

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

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

23 (a) *Provide locate request services during normal working days and provide an*
24 *emergency contact number for incidents occurring outside the normal*
25 *working day*~~Operate the protection notification center during all working~~
26 ~~days~~;

27 (b) *Provide a positive response system for excavators, locators, operators, and*

1 *other interested parties to determine the status of locating an underground*
2 *facility;*

3 *(c) Provide any excavation request with an identification number and the*
4 *names of the facility owners or operators who will be notified for each*
5 *locate request*~~[Provide a locate request identification number to the excavator~~
6 ~~for each excavation or demolition location request];~~

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

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

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

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

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

27 *(i) Maintain the following information for all requests to locate facilities for at*

- 1 least five (5) years from the date of the request:
- 2 1. Name and phone number of the excavator requesting the
- 3 underground facility locate and the type of work being performed by
- 4 the excavator;
- 5 2. Name, address, and phone number of underground facility operators;
- 6 3. Location of excavation; and
- 7 4. Start date and start time of excavation;
- 8 (j) Provide contact information for the protection notification center on their
- 9 Web site or pursuant to paragraph (e) of this subsection;
- 10 (k) Provide public awareness education and damage prevention programs in a
- 11 manner determined by each protection notification center;
- 12 (l) By September 1 of each year, file a report with the Governor and the
- 13 Legislative Research Commission detailing the number of locate requests
- 14 received monthly for each county served in the prior fiscal year; and
- 15 (m) Advertise and publish the contact number in a manner that notifies
- 16 potential excavators in the area served by the protection notification center.

- 17 (2) The Kentucky Contact Center shall be governed by a board of directors composed
- 18 of representatives of member operators who are elected by the membership. Board
- 19 seats may be filled by representatives of the following:
- 20 (a) A natural gas provider;
- 21 (b) An electric provider;
- 22 (c) A telecommunications provider;
- 23 (d) A water/sewer provider;
- 24 (e) An interstate pipeline operator;
- 25 (f) A municipal utility operator; and
- 26 (g) An advisory, nonvoting representative of one (1) of the following:
- 27 1. Home Builders Association of Kentucky;

- 1 2. National Electrical Contractors Association;
- 2 3. Associated General Contractors of Kentucky; or
- 3 4. Kentucky Association of Plumbing, Heating-Cooling Contractors.
- 4 (3) The Kentucky Contact Center's board of directors shall establish the method to
- 5 calculate the cost of service provided by the center.
- 6 (4) The Kentucky Contact Center shall serve all Kentucky counties.