

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 **a normal excavation locate request** [~~underground metallic facilities and~~
24 ~~underground nonmetallic facilities with metallic tracer wire~~], **a marked area** [~~a~~
25 ~~distance~~] not to exceed the combined width of the underground facility plus
26 eighteen (18) inches measured from the outer edge of each side of the
27 underground facility; or

- 1 (b) For *an unmapped or unlocatable facility request, a marked area*~~[nonmetallic~~
2 ~~facilities without metallic tracer wire, the underground facility]~~ shall be
3 located as accurately as possible from field location records and shall require
4 notification from the operator of the inability to accurately locate the facility;
- 5 (12) "Working day" means a twenty-four (24) hour period commencing from the time of
6 receipt of the notification by the Kentucky Contact Center except Saturday, Sunday,
7 and holidays established by federal or state statute;
- 8 (13) "Nonintrusive excavating" means excavation using hand tools or equipment that
9 uses air or water pressure as the direct means to break up soil for removal by hand
10 tools or vacuum excavation;
- 11 (14) "Mechanized equipment" means mechanical power equipment, including trenchers,
12 bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows,
13 skidders, and yarders;
- 14 (15) "Normal excavation locate request" means a notification *of planned excavation*
15 *made to the Kentucky Contact Center for a locatable underground facility*~~[a~~
16 ~~protection notification center where a request for locating utility facilities is~~
17 ~~processed];~~
- 18 (16) "Emergency locate request" means a notification made to a protection notification
19 center by an excavator to alert facility owners or operators of the need to begin
20 immediate excavation in response to an emergency;
- 21 (17) "Design information request" means a notification made to a protection notification
22 center by a person providing professional services and making a request in
23 preparation for bidding, preconstruction engineering, or other advance planning
24 efforts. A design information request may not be used for excavation purposes;
- 25 (18) "Large project" means an area of excavation occurring on or after July 1, 2016,
26 measuring more than two thousand (2,000) feet in length. Multiple excavation
27 notifications in an area may be considered together in determining if the

1 excavations are part of a large project;[~~and~~]

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

3 **(20) "Positive response" means an automated communication system provided by the**
4 **Kentucky Contact Center that allows excavators, locators, operators, and other**
5 **interested parties to determine the status of locating an underground facility and**
6 **to verify that operators and excavators have complied with Sections 2 and 3 of**
7 **this Act;**

8 **(21) "Unique identification number" or "locate request number" means a unique**
9 **number that the Kentucky Contact Center has assigned to a locate request for**
10 **excavation;**

11 **(22) "Locator" means any entity or individual that locates lines or facilities for an**
12 **operator;**

13 **(23) "Locatable facility" means an underground facility that can be located from the**
14 **surface using the current locating technology in an operator's industry; and**

15 **(24) "Unlocatable facility" means an underground facility that cannot be located**
16 **from the surface using normal locating methods and requires additional efforts**
17 **and extended time.**

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

19 (1) **An operator with underground facilities located in Kentucky shall become a**
20 **member of the Kentucky Contact Center. Operators who are members of the**
21 **Notification Center or a successor entity on the effective date of this Act shall**
22 **remain members. Operators of underground facilities used to produce, store,**
23 **convey, transmit, or distribute electricity, steam, natural or synthetic gas,**
24 **petroleum, or petroleum products who are not members on the effective date of**
25 **this Act shall join no later than December 31, 2021. Operators of underground**
26 **facilities used to produce, store, convey, transmit, or distribute**
27 **telecommunications service who are not members on the effective date of this Act**

1 shall join no later than December 31, 2022. All other operators of underground
2 facilities, including but not limited to water, wastewater, and municipal utilities
3 shall join no later than December 31, 2023. After December 31, 2023, any
4 operator shall become a member of the Kentucky Contact Center within thirty
5 (30) days of becoming an operator with underground facilities located in
6 Kentucky[Each operator shall provide protection notification center access to
7 excavators].

8 (2) After December 31, 2023, an excavator or any person involved in overseeing an
9 excavation, planning an excavation, or planning demolition work shall not be
10 liable for damages to underground facilities owned by nonmember operators, if
11 the excavator complied with the Underground Facilities Damage Prevention Act
12 of 1994, except for damages due to gross negligence or intentional misconduct of
13 an excavator[Voluntary Operator membership in the Kentucky Contact Center shall
14 satisfy the requirement of subsection (1) of this section].

15 (3) Each operator [~~member of the Kentucky Contact Center~~] shall provide and update
16 as 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 unmapped or unlocatable facility request, within five (5) working

1 *days after receiving notification from an excavator;*

2 (c) To an emergency locate request, as quickly as possible but not to exceed forty-
3 eight (48) hours after receiving notification from an excavator;

4 ~~(d)~~~~(e)}~~ To a design information request, within ten (10) working days after
5 receiving notification from the person making the request; and

6 ~~(e)~~~~(d)}~~ To a large project request, within five (5) working days from the later of
7 receiving notification from an excavator or the scheduled excavation start date
8 for that location.

9 (6) An operator shall, upon receiving an emergency locate request or a normal
10 excavation locate request:

11 (a) Inform the excavator of the approximate location and description of any of the
12 operator's facilities that may be damaged or pose a safety concern because of
13 excavation or demolition;

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

16 (c) Unless permanent facility markers are provided, provide temporary markings
17 to inform the excavator of the ownership and approximate location of the
18 underground facility; and

19 (d) Notify the requesting party if underground facilities are not in conflict with the
20 excavation or demolition.

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

23 The operator shall:

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

27 (b) Provide to the person making the design information request a description of

- 1 all underground facilities owned by the operator in the area of the design
 2 information request and the location of the facilities, which may include
 3 drawings marked with a scale, dimensions, and reference points for
 4 underground utilities already built in the area or other facility records that are
 5 maintained by the operator; or
- 6 (c) Allow the person making the design information request or an authorized
 7 person to inspect the drawings or other records for all underground facilities
 8 with the proposed area of excavation at a location that is acceptable to the
 9 operator.
- 10 (8) An operator may reject a design information request based upon security
 11 considerations or if producing the information will place the operator at a
 12 competitive disadvantage, pending the operator obtaining additional information
 13 confirming the legitimacy of the notice. The operator shall notify the person making
 14 the design information request and may request additional information.
- 15 (9) Temporary underground facility markers shall consist of paint, chalk, flags, stakes,
 16 or any combination thereof and shall conform to the following standards of the
 17 American Public Works Association uniform color code:
- | | |
|---|-------------------------------|
| 18 (a) Electric power distribution and transmission | Safety Red |
| 19 (b) Municipal electric systems | Safety Red |
| 20 (c) Gas distribution and transmission | High visibility safety yellow |
| 21 (d) Oil distribution and transmission | High visibility safety yellow |
| 22 (e) Dangerous materials, product lines | High visibility safety yellow |
| 23 (f) Telecommunication systems and cable television | Safety alert orange |
| 24 (g) Temporary survey markings | Safety pink |
| 25 (h) Police and fire communications | Safety alert orange |
| 26 (i) Water systems | Safety precaution blue |
| 27 (j) Sewer and storm drainage systems | Safety green |

- 1 (k) Proposed excavation or construction boundaries White
 2 (l) Reclaimed water, slurry, and irrigation facilities Purple

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

7 **(11) An operator that has received a unique identifying number from the Kentucky**
 8 **Contact Center shall provide a positive response to document the status of**
 9 **marking the approximate location of its underground facilities pursuant to**
 10 **Underground Facility Damage Prevention Act of 1994.**

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

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

- 15 (1) (a) Each excavator, or person responsible for an excavation, planning excavation
 16 or demolition work shall, not less than two (2) full working days nor more
 17 than ten (10) full working days prior to commencing work, notify each
 18 affected operator of the excavator's intended work and work schedule. **Prior to**
 19 **January 1, 2024,** contacting the applicable protection notification centers
 20 shall satisfy this requirement. **After December 31, 2023, contacting the**
 21 **Kentucky Contact Center shall satisfy this requirement.**
- 22 (b) An excavator may commence work before the two (2) full working days
 23 provided for in paragraph (a) of this subsection have elapsed if all affected
 24 operators have notified the **excavator**~~person~~ that the **approximate** location
 25 of all the affected operators' facilities have been marked or that they have no
 26 facilities in the area of the proposed excavation, demolition, or timber
 27 harvesting. **An excavator that has received a unique identifying number**

1 *from the Kentucky Contact Center shall confirm the status of the locate*
2 *request in the positive response system.*

- 3 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the
4 initial request.
- 5 (3) Each excavator shall provide each applicable protection notification center with
6 adequate information regarding:
- 7 (a) The name of the individual making the notification;
- 8 (b) The excavator's name, address, and a telephone number;
- 9 (c) The excavation or demolition site location or locations, each of which shall
10 not exceed two thousand (2,000) feet in length unless the excavator and
11 operator agree to a larger area, the city or community, county and street
12 address, including the nearest cross street;
- 13 (d) The type and extent of excavation or demolition to be performed;
- 14 (e) A contact name and telephone number of the person responsible for the work
15 to be performed.
- 16 (4) If more than one (1) excavator will operate at the same site, each excavator shall
17 notify the protection notification centers individually. Notification by an excavator
18 will serve as notification for any of that excavator's employees. Failure by an
19 excavator to notify the protection notification center does not relieve individual
20 employees of responsibility.
- 21 (5) The excavator shall inform and provide to excavation or demolition site employees:
- 22 (a) The underground facility location provided by each operator;
- 23 (b) Any related safety information provided by each operator; and
- 24 (c) The locate request identification number assigned by each protection
25 notification center.
- 26 (6) The excavator shall protect and preserve temporary underground facility markers
27 until the scheduled excavation or demolition is completed.

- 1 (7) If, after the two (2) day period provided by KRS 367.4909(5)(a), the excavator finds
2 evidence of an unmarked underground facility at the site, he shall immediately
3 notify the protection notification center.
- 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.
- 14 (b) If the underground facility damage causes concern for public or workplace
15 safety, the excavator shall notify appropriate public safety agencies of the
16 location and nature of the safety concern.
- 17 (c) If the underground facility damage results in the escape of any flammable,
18 toxic, or corrosive gas or liquid, the excavator shall cease excavation or
19 demolition activities and immediately report to the appropriate authorities by
20 calling the 911 emergency telephone number.
- 21 (10) When excavation or demolition is necessary within the approximate location of the
22 underground facility, the excavator shall hand-dig or use nonintrusive means to
23 avoid damage to the underground facility.
- 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 KRS 367.4909(9)(k). After marking the
27 boundaries, the excavator shall contact the protection notification center or centers.

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

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

6 (1) Each protection notification center shall:

- 7 (a) Operate the protection notification center during all working days;
- 8 (b) Provide a locate request identification number to the excavator for each
9 excavation or demolition location request;
- 10 (c) Promptly after receiving an excavation or demolition work notification from
11 an excavator, provide to each of its affected operator members the excavator
12 information required by KRS 367.4911(3);
- 13 (d) Maintain a list of all its operator members~~[member's identities]~~, their business
14 addresses~~[address]~~ and their business and emergency telephone numbers and
15 ~~[record this information in accordance with KRS 64.012 with the county clerk~~
16 ~~of each county where the operator member has underground facilities. The~~
17 ~~county clerk]~~shall provide this information upon request~~[for the actual cost~~
18 ~~of providing a copy, to be paid by the requesting party to the county clerk. The~~
19 ~~county clerk shall assume no liability associated with the receipt of this~~
20 ~~information from the protection notification center or for subsequent provision~~
21 ~~of this same information to the requesting party];~~
- 22 (e) Make the operator members information list available to any person for
23 inspection at its place of business without charge or provide a copy of the list
24 to any person for any county upon request for a fee not to exceed the actual
25 cost of providing a copy;
- 26 (f) Define and adopt policies and procedures for processing design information
27 requests; and

1 (g) Provide the person making a design information request a list of identified
2 operators that will receive notification and notify those operators.

3 (2) *The operators providing protection notification centers access to excavators who*
4 *are not members of the Kentucky Contact Center on the effective date of this Act*
5 *shall continue to comply with subsection (1) of this section until they become*
6 *members of the Kentucky Contact Center pursuant to subsection (1) of Section 2*
7 *of this Act.*

8 (3) The Kentucky Contact Center shall be governed by a board of directors ~~[composed~~
9 ~~of representatives of member operators]~~ who are elected by the membership. *The*
10 *board shall be composed of no more than twenty-four (24) voting members and*
11 *nine (9) nonvoting members as follows*~~[seats may be filled by representatives of~~
12 ~~the following]:~~

13 (a) *At least one (1) but not more than three (3) voting members representing*~~[A]~~
14 *natural gas providers*~~[provider];~~

15 (b) *At least one (1) but not more than three (3) voting members*
16 *representing*~~[An]~~ *electric providers*~~[provider];~~

17 (c) *At least one (1) but not more than three (3) voting members representing*~~[A]~~
18 *telecommunications providers*~~[provider];~~

19 (d) *At least one (1) but not more than three (3) voting members representing*~~[A]~~
20 *water/sewer providers*~~[provider];~~

21 (e) *At least one (1) but not more than three (3) voting members*
22 *representing*~~[An]~~ *interstate pipeline operators*~~[operator];~~

23 (f) *At least one (1) but not more than three (3) voting members representing*~~[A]~~
24 *municipal utility operators*~~[operator];~~~~[-and]~~

25 (g) *At least one (1) but not more than three (3) voting members representing*
26 *rural electric cooperatives;*

27 (h) *At least one (1) but not more than three (3) voting members representing*

- 1 rural telecommunications providers;
- 2 (i) At least one (1) but not more than three (3) nonvoting members
- 3 representing commercial excavators;
- 4 (j) One (1) nonvoting member representing the Home Builders Association of
- 5 Kentucky;
- 6 (k) One (1) nonvoting member representing the National Electrical Contractors
- 7 Association;
- 8 (l) One (1) nonvoting member representing the Associated General
- 9 Contractors of Kentucky;
- 10 (m) One (1) nonvoting member representing the Kentucky Association of
- 11 Master Contractors[An advisory, nonvoting representative of one (1) of the
- 12 following:
- 13 1.— Home Builders Association of Kentucky;
- 14 2.— National Electrical Contractors Association;
- 15 3.— Associated General Contractors of Kentucky; or
- 16 4.— Kentucky Association of Plumbing, Heating-Cooling Contractors]
- 17 (n) The executive director of the Public Service Commission or his or her
- 18 designee who shall serve as a nonvoting member; and
- 19 (o) The secretary of the Kentucky Transportation Cabinet or his or her
- 20 designee who shall serve as a nonvoting member.
- 21 (4) The bylaws of the Kentucky Contact Center shall contain the following:
- 22 (a) That an increase, a decrease, or any adjustments to the membership dues,
- 23 rates, tariffs, locate fees, or any other charges imposed by the Kentucky
- 24 Contact Center requires approval by an affirmative, majority vote of the
- 25 voting members of the board of directors; and
- 26 (b) That the Kentucky Contact Center shall annually update its base map data,
- 27 including street addresses.

1 (5) Beginning October 1, 2020, and on every October 1 thereafter, the Kentucky
2 Contact Center shall provide a financial audit report to the Legislative Research
3 Commission and to the Governor to reveal the true financial health of the
4 Kentucky Contact Center. The report shall be made available to the Kentucky
5 Contact Center membership and by request made to the executive director of the
6 Kentucky Contact Center.

7 (6) Beginning October 1, 2020, and on every October 1 thereafter, the Kentucky
8 Contact Center shall provide a report on the current membership, daily
9 operations, and recommendations for modifications to the Underground Facility
10 Damage Prevention Act of 1994 to the Legislative Research Commission and to
11 the Governor. The report shall be made available on the Kentucky Contact Center
12 Web site.

13 (7) The General Assembly finds and declares that the work of the Kentucky Contact
14 Center is to ensure public safety and should not be conducted in secret. The
15 Kentucky Contact Center shall post notices and minutes of its board of director
16 meetings on its Web site. Regular meeting notices shall be posted thirty (30) days
17 before the meeting on its Web site. Emergency meeting notices shall be posted
18 twenty-four (24) hours before the meeting on its Web site.

19 ~~(8)(3)~~ The Kentucky Contact Center's board of directors shall establish the method
20 to calculate the cost of service provided by the center.

21 ~~(9)(4)~~ The Kentucky Contact Center shall serve all Kentucky counties.