

**CHAPTER 222 (HB 120)**

AN ACT relating to underground facility damage prevention.

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

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

As used in KRS 367.4903 to 367.4917:

- (1) "Underground facility" means *an underground*~~[a]~~ line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam, or sewerage, including storm drainage.
- (2) "Damage" means weakening of structural or lateral support or penetration of a facility coating, housing, or other protective device. It also means the partial or complete dislocation or severance of underground facilities.
- (3) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of mechanized equipment, or discharge of explosives.
- (4)~~—"Mechanized equipment" means any equipment or tool energized by other than human or animal power.~~
- (5)~~—"Excavator" means any entity or individual, *other than those exempted by Section 5 of this Act*, engaged in~~[a trade or business or government service which includes]~~ excavation or demolition.~~["Excavator" does not mean a utility operator or utility operator subcontractor performing work to provide or repair utility customer service.]~~~~
- (5)~~(6)~~ "Operator" means any entity or individual owning underground facilities to serve the public.
- (6)~~(7)~~ "Excavation" means any activity that results in the movement, placement, probing, *boring*, or removal of earth, rock, or other material in or on the ground by the use of *any tools or*~~[mechanized]~~ equipment, or by the discharge of explosives.
- (7)~~(8)~~ "Emergency" means there exists substantial likelihood that loss of life, property, or utility service will result before procedures required under KRS 367.4909 to 367.4913 can be completed.
- (8)~~(9)~~ "Protection notification center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground facilities.
- (9)~~(10)~~ "One-call center" means a private sector, multimember protection notification center providing a single telephone contact number through which an excavator may contact all operator one-call center members and all affected operators may receive information to enable them to provide the excavator with the approximate location of underground facilities.
- (10)~~(11)~~ "Routine road maintenance" means preservation, including road repairs and resurfacing, but not construction at the subgrade level; and surface ditch grading, but not grading below the original surface ditch depth.
- (11)~~(12)~~ "Approximate location," *when referring to an underground facility*, means:
  - (a) For underground metallic facilities and underground nonmetallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus



(k) Proposed excavation or construction boundaries

White

(l) *Reclaimed water, slurry, and irrigation facilities*

Purple

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

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

- (1) Each excavator planning excavation or demolition work shall, not less than two (2) business days nor more than ten (10) business days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.
- (2) Each excavator shall provide each applicable protection notification center with adequate information regarding:
- The name of the individual making the notification;
  - The *excavator's*~~complete company~~ name, address, and a~~business~~ telephone number;
  - The *excavation or demolition*~~work~~ site location *or locations, each of which shall not exceed two thousand (2,000) feet in length unless the excavator and operator agree to a larger area, the city or community, county and* street address, including the *nearest* cross street~~where applicable~~;
  - The type *and*~~,~~ extent~~, duration, and scheduled starting date and time~~ of *excavation or demolition*~~work~~ to be performed;
  - A contact name and telephone number of the person responsible for the work to be performed.
- (3) *If more than one excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.*
- (4) The excavator shall inform and provide to *excavation or demolition*~~each work~~ site *employees*~~employee~~:
- The *underground* facility location~~and safety information~~ provided by each operator;
  - Any related safety information provided by each operator; and*
  - The locate request identification number assigned by the protection notification center.*
- (5)~~(4)~~ The excavator shall protect and preserve temporary underground facility markers until the scheduled *excavation or demolition*~~work~~ is completed.
- (6) *If, after the two (2) day period provided by subsection (4) of Section 2 of this Act, the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.*
- (7) *The excavator shall contact the protection notification center to request remarking every twenty-one (21) days while excavation or demolition continues or if:*

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

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

~~(5) Each excavator shall request each operator to remark its facilities if the temporary facility markers become nonfunctional or the excavator materially alters his work plan or location.~~

~~(8)~~~~(6)~~ Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage ~~or which causes concern for public or workplace safety~~ shall ~~immediately upon discovery of same,~~ cease excavation *or* ~~and~~ demolition activities and notify all affected operators of the location and nature of the ~~safety concern or~~ underground facility damage. *If the underground facility damage causes concern for public or workplace safety, the excavator shall notify appropriate public safety agencies of the location and nature of the safety concern.*

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

~~(10)~~~~(7)~~ Upon request by an operator, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(5). This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

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

Each protection notification center shall:

- (1) Operate the protection notification center during all business days.
- (2) *Provide a locate request identification number to the excavator for each excavation or demolition location request.*
- (3) *Promptly*~~Immediately~~ after receiving an excavation or demolition work notification from an excavator, provide to each of its affected operator members the excavator information required by KRS 367.4911(2).
- ~~(4)~~~~(3)~~ Maintain a list of all its operator member's identities, business address and business and emergency telephone numbers and record this information in accordance with KRS 64.012 with the county clerk of each county where the operator member has underground facilities. The county clerk shall provide this information upon request for the actual cost of providing a copy, to be paid by the requesting party to the county clerk. The county clerk shall assume no liability associated with the receipt of this information from the protection notification center or for subsequent provision of this same information to the requesting party.
- ~~(5)~~~~(4)~~ Make the operator members information list available to any person for inspection at its place of business without charge or provide a copy of the list to any person for any county upon request for a fee not to exceed the actual cost of providing a copy.

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

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

- ~~(1) Excavation after all involved excavators and operators have completed joint working agreements and documented that all proposed excavation and demolition was reviewed and notification provided.~~

~~(2)~~—Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities.

~~(2)~~~~(3)~~ Routine road maintenance *or railroad maintenance or repairs*. ~~(4)~~

~~Excavation using only nonpowered hand tools or animal power.]~~

~~(3)~~~~(5)~~—Tilling of soil for agricultural purposes.

~~(4)~~~~(6)~~ *Excavators* ~~[Persons, other than those in the excavation business for hire,]~~ excavating on *private* ~~[residential]~~ property, *using nonmechanized equipment, if there is no encroachment on any operator's right-of-way or easement.*

~~(5)~~~~(7)~~—The opening of a grave in a cemetery.

~~(6)~~~~(8)~~—A solid waste disposal site which is properly permitted.

~~(7)~~~~(9)~~—Coal mining operations which are currently regulated under KRS Chapter 350.

~~(8)~~ *A utility operator or utility operator subcontractor performing work to provide or repair utility customer service.*

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

- (1) An excavator who fails to comply with any provision of Section 3 of this Act, or an operator who fails to comply with any provision of Section 2 of this Act, shall be guilty of endangering underground facilities and may be subject to a fine of no more than two hundred and fifty dollars (\$250) for the first offense, no more than one thousand dollars (\$1000) for the second offense within one (1) year, and no more than three thousand dollars (\$3,000) for the third and any subsequent offense.*
- (2) A protection notification center that fails to comply with any provision of Section 4 of this Act shall be subject to a fine not to exceed one thousand dollars (\$1,000) for each offense[*

~~Any person who violates any provision of KRS 367.4905 to 367.4913 shall be subject to a civil penalty of one thousand dollars (\$1,000) for each violation, except that the civil penalty shall be two hundred and fifty dollars (\$250) for the first violation and five hundred dollars (\$500) for the second violation. This penalty shall not apply for persons or acts excluded under KRS 367.4903(5), 367.4907, and 367.4915. Action to recover the penalty provided for in this section may be brought by the Attorney General at the request of the injured party in the county in which the cause arose or in which the defendant has its principal in-state place of business or residence. The Attorney General may engage the assistance of the county attorney or Commonwealth attorney in the appropriate jurisdiction. Each involved enforcement authority may recover its enforcement cost incurred under this section. Reimbursement of enforcement authority costs shall be administered by the Attorney General. All penalties recovered in an action under this section shall be paid to the Attorney General, who shall deduct enforcement costs from the recovered penalties and remit the remainder to the general fund. If enforcement costs exceed recovered penalties, the violator may be held responsible for any remaining enforcement costs].~~

**Approved March 29, 2000**