

CHAPTER 180**(HB 649)**

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 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) "Excavator" means any entity or individual, other than those exempted by KRS 367.4915, engaged in excavation or demolition.
- (5) "Operator" means any entity or individual owning underground facilities to serve the public.
- (6) "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 equipment, or by the discharge of explosives. ***Forms of excavating include but are not limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling.***
- (7) "Emergency" means there exists substantial likelihood that loss of life, property, or ***the inability to restore interrupted*** utility service will result before procedures required under KRS 367.4909 to 367.4913 can be completed.
- (8) "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) "One-call center" means a ~~private sector,~~ multimember protection notification center providing a single telephone contact number ***and designated by the Kentucky Public Service Commission to be the sole recipient of 811 dialed calls*** 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) "Routine road maintenance" means preservation, including road repairs and resurfacing, but ***does not include road construction or penetration of existing grade*** ~~[at the subgrade level; and surface ditch grading, but not grading below the original surface ditch depth].~~
- (11) "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 eighteen (18) inches measured from the outer edge of each side of the underground facility; or
 - (b) For nonmetallic facilities without metallic tracer wire, the underground facility shall be located as accurately as possible from field location records.
- (12) "Business day" means from 8 a.m. to 5 p.m. every day except Saturday, Sunday, and holidays established by federal or state statute.

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

- (1) Each operator shall provide protection notification center access to excavators.

- (2) Voluntary operator membership in ~~the [a] one-call [protection notification]~~ center shall satisfy the requirement of subsection (1) of this section.
- (3) Each operator member of ~~the [a]~~ one-call center shall provide and update as needed to the one-call center the general location of its facilities, the operator identity and business address, and emergency notification telephone numbers.
- (4) An operator shall, within two (2) business days after receiving notification from an excavator:
- Inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition;
 - Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to underground facilities;
 - Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility; and
 - Notify the requesting party if underground facilities are not in conflict with the excavation or demolition.
- (5) Temporary underground facility markers shall consist of paint, chalk, flags, stakes, or any combination thereof and shall conform to the following standards of the American Public Works Association uniform color code:
- | | |
|--|-------------------------------|
| (a) Electric power distribution and transmission | Safety Red |
| (b) Municipal electric systems | Safety Red |
| (c) Gas distribution and transmission | High visibility safety yellow |
| (d) Oil distribution and transmission | High visibility safety yellow |
| (e) Dangerous materials, product lines | High visibility safety yellow |
| (f) Telecommunication systems and cable television | Safety alert orange |
| (g) Temporary survey markings | Safety pink |
| (h) Police and fire communications | Safety alert orange |
| (i) Water systems | Safety precaution blue |
| (j) Sewer and storm drainage systems | Safety green |
| (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:

- 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.
- Each excavator shall provide each applicable protection notification center with adequate information regarding:
 - The name of the individual making the notification;
 - The excavator's name, address, and a telephone number;
 - The excavation or demolition 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;

- (d) The type and extent of excavation or demolition to be performed;
 - (e) A contact name and telephone number of the person responsible for the work to be performed.
- (3) If more than one (1) 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 site employees:
 - (a) The underground facility location provided by each operator;
 - (b) Any related safety information provided by each operator; and
 - (c) The locate request identification number assigned by the protection notification center.
 - (5) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.
 - (6) If, after the two (2) day period provided by KRS 367.4909(4), 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.
 - (8) Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage.
 - (a) 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.
 - (b) ***If the underground facility damage results in the escape of any flammable, toxic, or corrosive gas or liquid, the excavator shall cease excavation or demolition activities and immediately report to the appropriate authorities by calling the 911 emergency telephone number.***
 - (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) 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 367.4915 is amended to read as follows:

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

- (1) Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities.
- (2) Routine road maintenance or railroad maintenance or repairs.
- (3) Tilling of soil for agricultural purposes.
- (4) Excavators excavating on private property, using nonmechanized equipment, if there is no encroachment on any operator's right-of-way or easement.
- (5) The opening of a grave in a cemetery.
- (6) A solid waste disposal site which is properly permitted.
- (7) Coal mining operations which are currently regulated under KRS Chapter 350.

- (8) A utility operator or utility operator subcontractor performing *emergency* work *as defined in Section 1 of this Act* ~~to provide or repair utility customer service~~.

➔Section 5. KRS 367.4917 is amended to read as follows:

- (1) An excavator who fails to comply with any provision of KRS 367.4911, or an operator who fails to comply with any provision of KRS 367.4909, 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 (\$1,000) 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 KRS 367.4913 shall be subject to a fine of ~~not to exceed~~ one thousand dollars (\$1,000) for each offense.
- (3) (a) *All fines recovered for a violation of this section shall be paid to the General Fund of the state, county, or city which issued the citation.*
- (b) *In the event that more than one (1) government agency was involved, the court shall direct an apportionment of the fines.*

Signed by Governor April 24, 2008.