

CHAPTER 137

(SB 152)

AN ACT relating to underground facility damage protection.

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, **or timber harvesting using mechanized equipment**;
- (5) "Operator" means any entity or individual owning **or operating** 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, **or by the harvesting of timber using mechanized equipment**. 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 or 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 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;
- (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; ~~and~~
- (12) "Business day" means ~~any~~ ~~from 8 a.m. to 5 p.m. every~~ day except Saturday, Sunday, and holidays established by federal or state statute;
- (13) **"Nonintrusive excavating" means excavation using hand tools or equipment that uses air or water pressure as the direct means to break up soil for removal by hand tools or vacuum excavation;**
- (14) **"Mechanized equipment" means mechanical power equipment including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, hydroexcavators, skidders, and yarders;**

- (15) *"Normal excavation locate request" means a notification made to a protection notification center where a request for locating utility facilities is processed;*
- (16) *"Emergency locate request" means a notification made to a protection notification center by an excavator to alert facility owners or operators of the need to begin immediate excavation in response to an emergency; and*
- (17) *"Design locate request" means a notification made to a protection notification center in preparation for bidding, preconstruction engineering, or other advance planning efforts. A design locate request may not be used for excavation purposes.*

➔Section 2. KRS 367.4907 is amended to read as follows:

Every person who engages in nonemergency *timber harvesting using mechanized equipment*, excavation, or demolition work shall conform to KRS 367.4905 to 367.4917. Compliance with excavator and operator notification requirements of KRS 367.4905 to 367.4917 shall not be required of authorized persons responding to emergency situations. However, these persons shall take every reasonable precaution to protect the public safety and underground facilities of others.

➔Section 3. 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 one-call center shall satisfy the requirement of subsection (1) of this section.
- (3) Each operator member of the one-call center shall provide and update as needed to the one-call center the general location of its *underground* facilities, the operator identity and business address, and emergency notification telephone numbers.
- (4) An operator shall ~~{}~~ *respond to facility locate requests as follows:*
 - (a) *To a normal excavation locate request* within two (2) business days after receiving notification from an excavator.~~{}.~~
 - (b) *To an emergency locate request as quickly as possible but not to exceed forty-eight (48) hours after receiving notification from an excavator; and*
 - (c) *Beginning one (1) year from the effective date of this Act, to a design locate request within ten (10) business days after receiving notification from an excavator.*
- (5) *An operator shall, upon receiving an emergency locate request or a normal excavation locate request:*
 - (a) 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;
 - (b) Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to underground facilities;
 - (c) Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility; and
 - (d) Notify the requesting party if underground facilities are not in conflict with the excavation or demolition.
- (6) *Upon receiving a design locate request an operator shall provide to the person making the request the best available description of all utility facilities within the area of the proposed excavation. This includes, but is not limited to prints, maps, drawings, and other facility records of existing and proposed utility facilities.*
- (7)~~{}(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 |
- (8)~~(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, *force majeure*, disasters, or civil unrest that make timely response difficult or impossible.
- (9) ***All underground facilities installed after January 1, 2013, shall include a means to accurately identify and locate the underground facilities from the surface. This subsection does not apply to the repair of existing facilities.***
- ➔Section 4. KRS 367.4911 is amended to read as follows:
- (1) (a) Each excavator planning excavation or demolition work shall, not less than two (2) **full** business days nor more than ten (10) **full** 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.
- (b) ***An excavator may commence work before the two (2) full working days provided for in paragraph (a) of this subsection have elapsed if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that they have no facilities in the area of the proposed excavation, demolition, or timber harvesting.***
- (2) ***Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.***
- (3)~~(2)~~ Each excavator shall provide each applicable protection notification center with adequate information regarding:
- (a) The name of the individual making the notification;
- (b) The excavator's name, address, and a telephone number;
- (c) 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.
- (4)~~(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.
- (5)~~(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.
- (6)~~(5)~~ The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.
- (7)~~(6)~~ If, after the two (2) day period provided by KRS 367.4909(4)(a), the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.

~~(8)(7)~~ The excavator shall contact the protection notification center to request remarking *two (2) business days in advance of the expiration of each*~~every~~ twenty-one (21) *day period*~~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.

~~(9)(8)~~ (a) 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.

- (b) 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.
- (c) 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.

~~(10)(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.

~~(11)(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(7)~~(5)~~. This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

➔Section 5. 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 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(3)~~(2)~~.
- (4) 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) 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.
- (6) ***The one-call center shall be governed by a board of directors composed of representatives of member operators who are elected by the membership. Board seats may be filled by representatives of the following:***
 - (a) *A natural gas provider;*
 - (b) *An electric provider;*
 - (c) *A telecommunications provider;*
 - (d) *A water/sewer provider;*
 - (e) *An interstate pipeline operator;*
 - (f) *A municipal utility operator; and*
 - (g) ***An advisory, nonvoting representative of one of the following:***
 - 1. *Home Builders Association of Kentucky;*
 - 2. *National Electrical Contractors Association;*
 - 3. *Associated General Contractors of Kentucky; or*

4. Kentucky Association of Plumbing, Heating-Cooling Contractors.

- (7) *The one-call center's board of directors shall establish the method to calculate the cost of service provided by the center.*
- (8) *Kentucky Underground Protection, Inc. shall serve all Kentucky counties.*

➔Section 6. 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; ~~{or}~~
- (8) A utility operator or utility operator subcontractor performing emergency work as defined in KRS 367.4903;
- (9) *Leak migration testing using metal probes inserted by hand by an authorized representative of the operator; or*
- (10) *Any nonintrusive excavating performed by an operator or his subcontractor to locate the operator's underground facilities in response to a notice of excavation from the notification center, if all reasonable precautions have been taken to protect the underground facilities.*

➔Section 7. 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 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 one thousand dollars (\$1,000) for each offense.
- (3) *A person that knowingly provides false notice to a utility notification center of an emergency as defined in KRS 367.4903 shall be subject to a fine of one thousand dollars (\$1000) for each offense.*
- ~~(4)~~~~(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 11, 2012.