

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 367.4909 is amended to read as follows:

- 4 (1) ***An operator with underground facilities located in Kentucky shall become a***
5 ***member of the Kentucky Contact Center. Operators who are members of the***
6 ***Notification Center or a successor entity on July 13, 2018, shall remain members.***
7 ***Operators with more than fifty thousand (50,000) customers or one thousand***
8 ***(1,000) miles of facilities who are not members on July 13, 2018, shall join no***
9 ***later than January 1, 2019. Operators with more than twenty-five thousand***
10 ***(25,000) customers or five hundred (500) miles of facilities who are not members***
11 ***on July 13, 2018, shall join no later than July 1, 2019. All other operators that do***
12 ***not meet one (1) of the criteria provided in this subsection shall join no later than***
13 ***October 1, 2019. After October 1, 2019, any operator shall become a member of***
14 ***the Kentucky Contact Center within thirty (30) days of becoming an operator with***
15 ***underground facilities located in Kentucky***~~[Each operator shall provide protection~~
16 ~~notification center access to excavators].~~
- 17 (2) ***After December 31, 2019, an excavator or any person involved in overseeing an***
18 ***excavation, planning an excavation, or planning demolition work shall not be***
19 ***liable for damages to underground facilities owned by nonmember operators, if***
20 ***the excavator complied with the Underground Facilities Damage Prevention Act***
21 ***of 1994***~~[Voluntary Operator membership in the Kentucky Contact Center shall~~
22 ~~satisfy the requirement of subsection (1) of this section].~~
- 23 (3) Each operator ~~[member of the Kentucky Contact Center]~~ shall provide and update
24 as needed to the Kentucky Contact Center the general location of its underground
25 facilities, the operator identity and business address, and emergency notification
26 telephone numbers.
- 27 (4) An operator shall respond to facility locate requests as follows:

- 1 (a) To a normal excavation locate request within two (2) working days after
2 receiving notification from an excavator, excluding large projects.
- 3 (b) To an emergency locate request as quickly as possible but not to exceed forty-
4 eight (48) hours after receiving notification from an excavator;
- 5 (c) To a design information request within ten (10) working days after receiving
6 notification from the person making the request; and
- 7 (d) To a large project request within five (5) working days from the later of
8 receiving notification from an excavator or the scheduled excavation start date
9 for that location.
- 10 (5) An operator shall, upon receiving an emergency locate request or a normal
11 excavation locate request:
- 12 (a) Inform the excavator of the approximate location and description of any of the
13 operator's facilities that may be damaged or pose a safety concern because of
14 excavation or demolition;
- 15 (b) Inform the excavator of any other information that would assist in locating
16 and avoiding contact with or damage to underground facilities;
- 17 (c) Unless permanent facility markers are provided, provide temporary markings
18 to inform the excavator of the ownership and approximate location of the
19 underground facility; and
- 20 (d) Notify the requesting party if underground facilities are not in conflict with the
21 excavation or demolition.
- 22 (6) Upon receiving a design information request, an operator shall contact the person
23 making the request within the time period specified in subsection (4) of this section.
24 The operator shall:
- 25 (a) Designate with temporary underground facility markers the location of all
26 underground facilities owned by the operator within the area of the design
27 information request as defined in KRS 367.4903;

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

- 1 (j) Sewer and storm drainage systems Safety green
 2 (k) Proposed excavation or construction boundaries White
 3 (l) Reclaimed water, slurry, and irrigation facilities Purple

4 (9) **Notwithstanding this section, operators with state-owned underground facilities**
 5 **located within the right-of-way of a state highway, which are subject to KRS**
 6 **177.106, shall not be required to respond to facility locate requests required by**
 7 **this section.**

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

12 **(11)**~~(10)~~ All underground facilities installed after January 1, 2013, shall include a
 13 means to accurately identify and locate the underground facilities from the surface.
 14 This subsection does not apply to the repair of existing facilities.

15 ➔Section 2. KRS 367.4911 is amended to read as follows:

16 (1) (a) Each excavator, or person responsible for an excavation, planning excavation
 17 or demolition work shall, not less than two (2) full working days nor more
 18 than ten (10) full working days prior to commencing work, notify each
 19 affected operator of the excavator's intended work and work schedule.
 20 Contacting the applicable protection notification centers shall satisfy this
 21 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 person that the location of all the affected
 25 operators' facilities have been marked or that they have no facilities in the area
 26 of the proposed excavation, demolition, or timber harvesting.

27 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the

- 1 initial request.
- 2 (3) Each excavator shall provide each applicable protection notification center with
3 adequate information regarding:
- 4 (a) The name of the individual making the notification;
- 5 (b) The excavator's name, address, and a telephone number;
- 6 (c) The excavation or demolition site location or locations, each of which shall
7 not exceed two thousand (2,000) feet in length unless the excavator and
8 operator agree to a larger area, the city or community, county and street
9 address, including the nearest cross street;
- 10 (d) The type and extent of excavation or demolition to be performed;
- 11 (e) A contact name and telephone number of the person responsible for the work
12 to be performed.
- 13 (4) If more than one (1) excavator will operate at the same site, each excavator shall
14 notify the protection notification centers individually. Notification by an excavator
15 will serve as notification for any of that excavator's employees. Failure by an
16 excavator to notify the protection notification center does not relieve individual
17 employees of responsibility.
- 18 (5) The excavator shall inform and provide to excavation or demolition site employees:
- 19 (a) The underground facility location provided by each operator;
- 20 (b) Any related safety information provided by each operator; and
- 21 (c) The locate request identification number assigned by each protection
22 notification center.
- 23 (6) The excavator shall protect and preserve temporary underground facility markers
24 until the scheduled excavation or demolition is completed.
- 25 (7) If, after the two (2) day period provided by KRS 367.4909(4)(a), the excavator finds
26 evidence of an unmarked underground facility at the site, he shall immediately
27 notify the protection notification center.

- 1 (8) The excavator shall contact the protection notification center to request remarking
2 two (2) working days in advance of the expiration of each twenty-one (21) day
3 period while excavation or demolition continues or if:
- 4 (a) The markings of any underground facility have been removed or are no longer
5 visible; or
- 6 (b) The excavator has changed the work plan or location previously filed.
- 7 (9) (a) Each excavator who conducts or is responsible for any excavation or
8 demolition that results in underground facility damage shall cease excavation
9 or demolition activities and notify all affected operators of the location and
10 nature of the underground facility damage.
- 11 (b) If the underground facility damage causes concern for public or workplace
12 safety, the excavator shall notify appropriate public safety agencies of the
13 location and nature of the safety concern.
- 14 (c) If the underground facility damage results in the escape of any flammable,
15 toxic, or corrosive gas or liquid, the excavator shall cease excavation or
16 demolition activities and immediately report to the appropriate authorities by
17 calling the 911 emergency telephone number.
- 18 (10) When excavation or demolition is necessary within the approximate location of the
19 underground facility, the excavator shall hand-dig or use nonintrusive means to
20 avoid damage to the underground facility.
- 21 (11) Upon request by an operator or when the proposed excavation location cannot be
22 accurately identified, an excavator shall mark the boundaries of the location to be
23 excavated using the procedure set forth in KRS 367.4909(8)(k). After marking the
24 boundaries, the excavator shall contact the protection notification center or centers.
25 The requirements of KRS 367.4909(4) to (11)~~[(10)]~~ are reestablished upon the
26 operator receiving notification of this marking from the protection notification
27 center or centers. This marking shall not alter, or relieve the excavator from

1 complying with, the requirements of KRS 367.4905 to 367.4917.

2 ➔Section 3. KRS 367.4913 is amended to read as follows:

3 (1) Each protection notification center shall:

4 (a) Operate the protection notification center during all working days;

5 (b) Provide a locate request identification number to the excavator for each
6 excavation or demolition location request;

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

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

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

24 (f) Define and adopt policies and procedures for processing design information
25 requests; and

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

1 (2) The Kentucky Contact Center shall be governed by a board of directors ~~[composed~~
 2 ~~of representatives of member operators]~~ who are elected by the membership. **The**
 3 **board shall be composed of no more than twenty-seven (27) voting members and**
 4 **four (4) nonvoting members as follows**~~[seats may be filled by representatives of the~~
 5 ~~following]:~~

- 6 (a) **One (1) but not more than three (3) voting members representing**~~[A]~~ natural
 7 gas **providers**~~[provider];~~
- 8 (b) **One (1) but not more than three (3) voting members representing**~~[An]~~
 9 electric **providers**~~[provider];~~
- 10 (c) **One (1) but not more than three (3) voting members representing**~~[A]~~
 11 telecommunications **providers**~~[provider];~~
- 12 (d) **One (1) but not more than three (3) voting members representing**~~[A]~~
 13 water/sewer **providers**~~[provider];~~
- 14 (e) **One (1) but not more than three (3) voting members representing**~~[An]~~
 15 interstate pipeline **operators**~~[operator];~~
- 16 (f) **One (1) but not more than three (3) voting members representing**~~[A]~~
 17 municipal utility **operators**~~[operator];~~~~[-and]~~
- 18 (g) **One (1) but not more than three (3) voting members representing rural**
 19 **electric cooperatives;**
- 20 (h) **One (1) but not more than three (3) voting members representing rural**
 21 **telecommunications providers;**
- 22 (i) **One (1) but not more than three (3) voting members representing**
 23 **commercial excavators;**
- 24 (j) **One (1) nonvoting member representing the Home Builders Association of**
 25 **Kentucky;**
- 26 (k) **One (1) nonvoting member representing the National Electrical Contractors**
 27 **Association;**

- 1 (l) One (1) nonvoting member representing the Associated General
2 Contractors of Kentucky; and
- 3 (m) One (1) nonvoting member representing the Kentucky Association of
4 Master Contractors~~[An advisory, nonvoting representative of one (1) of the~~
5 ~~following:~~
- 6 1.— Home Builders Association of Kentucky;
- 7 2.— National Electrical Contractors Association;
- 8 3.— Associated General Contractors of Kentucky; or
- 9 4.— Kentucky Association of Plumbing, Heating Cooling Contractors].
- 10 (3) The bylaws of the Kentucky Contact Center shall contain the following:
- 11 (a) That an increase, a decrease, or any adjustments to the membership dues,
12 rates, tariffs, locate fees, or any other charges imposed by the Kentucky
13 Contact Center requires approval by an affirmative, majority vote of the
14 members of the board of directors; and
- 15 (b) That the Kentucky Contact Center shall annually update its base map data,
16 including street addresses.
- 17 (4) Beginning October 1, 2018, and on every October 1 thereafter, the Kentucky
18 Contact Center shall provide a financial audit report to the Legislative Research
19 Commission and to the Governor to reveal the true financial health of the
20 Kentucky Contact Center. The report shall be made available on the Kentucky
21 Contact Center Web site.
- 22 (5) By October 1, 2020, the Kentucky Contact Center shall provide a report on the
23 current membership, daily operations, and recommendations for modifications to
24 the Underground Facility Damage Prevention Act to the Legislative Research
25 Commission and to the Governor.
- 26 (6) The General Assembly finds and declares that the work of the Kentucky Contact
27 Center is to ensure public safety and should not be conducted in secret. The

1 *Kentucky Contact Center shall post notices and minutes of its board of director*
2 *meetings on its Web site. Regular meeting notices shall be posted thirty (30) days*
3 *before the meeting on its Web site. Emergency meeting notices shall be posted*
4 *twenty-four (24) hours before the meeting on its Web site.*

5 (7) The Kentucky Contact Center's board of directors shall establish the method to
6 calculate the cost of service provided by the center.

7 (8)~~(4)~~ The Kentucky Contact Center shall serve all Kentucky counties.