

CHAPTER 21**(SB 174)**

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 or rendering any underground facility permanently inaccessible by the placement of a permanent structure having one (1) or more stories;
- (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, demolition, or timber harvesting using mechanized equipment;
- (5) "Operator" means any entity or individual owning or operating underground facilities to serve the public, but does not include any entity or individual owning or operating underground storage tanks that are subject to Subchapter 60 of KRS Chapter 224;
- (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, 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. Driving wooden stakes by use of hand tools to a depth of six (6) inches or less below existing grade shall not constitute excavation;
- (7) "Emergency" means there exists substantial likelihood that loss of life or property, the inability to restore interrupted utility service, an imminent danger to health or the environment, or the blockage of public transportation facilities 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) "Kentucky Contact Center" means Kentucky Underground Protection, Inc., organized as a nonprofit corporation and 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 Kentucky Contact Center members and all affected member 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, and the replacement of signs, posts, and guardrails at the exact same location when no additional penetration of existing grade is necessary, but does not include road construction, installation of signs, posts, and guardrails, or any activity that requires 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 twenty-four (24) inches measured from the outer edge of each side of the underground facility; or

- (b) For unmapped or untonable facilities, the underground facility shall be located as accurately as possible from field location records and shall require notification from the operator of the inability to accurately locate the facility;
- (12) "Working day" means every day, except Saturday, Sunday, and holidays established by federal or state statute. For purposes of measuring any period of time prescribed or allowed under the Underground Facility Damage Prevention Act of 1994, a working day shall commence at 12:01 a.m. eastern time and end at 12 midnight eastern time excluding the day the locate request was made;
- (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, 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;
- (17) "Design information request" means a notification made to a protection notification center by a person providing professional services and making a request in preparation for bidding, preconstruction engineering, or other advance planning efforts. A design information request may not be used for excavation purposes;
- (18) "Large project request" means an area of excavation occurring on or after July 1, 2016, measuring more than two thousand (2,000) feet in length. Multiple excavation notifications in an area may be considered together in determining if the excavations are part of a large project;
- (19) "Commission" means the Kentucky Public Service Commission;
- (20) "Person" means an individual, an entity, a foreign entity, or other legal or commercial entity;
- (21) "Positive response" means an automated or written communication system provided by each protection notification center for all locate requests the center receives pursuant to KRS 367.4909 that allows excavators, locators, operators, and other interested parties to determine the status of locating an underground facility and requires response and verification by operators and excavators to comply with their respective requirements of the Underground Facility Damage Prevention Act of 1994;
- (22) "Unique identification number" or "locate request number" means a unique number that any protection notification center or operator pursuant to KRS 367.4913 has assigned to a locate request for excavation;
- (23) "Locator" means any entity or individual that locates lines or facilities for an operator;
- (24) "Second notice" means a notice that is made by an excavator to a notification center when an operator has failed to comply with the positive response requirements under KRS 367.4909(5);
- (25) "Tolerance zone" means a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the facility;
- (26) "Untonable facility" means an underground facility that cannot be located from the surface using locating methods which meet industry standards and that requires additional efforts and extended time;
- (27) "Work site contact" means an individual that will be present at the excavation site when the excavation will occur;~~and~~
- (28) "Fiber-to-the-premises" means a service that provides network connectivity between a location and a subscriber using fiber;
- (29) ***"Communications network" means the platform that is used to exchange information and data between two (2) or more devices that are connected to the platform;***
- (30) ***"Communications service provider" means an entity that offers communications services or some combination of information and media services, content, entertainment, and application services over communications networks; and***
- (31) ***"Communications terminal" means the enclosure containing communications equipment that connects users to the communications network.***

➔ 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 Kentucky Contact Center shall satisfy the requirement of subsection (1) of this section.
- (3) Each operator member of the Kentucky Contact Center shall provide and update as needed to the Kentucky Contact Center the general location of its underground facilities, the operator identity and business address, and emergency notification telephone numbers.
- (4)
 - (a) Each operator shall report to the commission excavation damage to an underground facility used in the transportation of gas or hazardous liquid within thirty (30) calendar days of being informed of the damage. Each report of excavation damage shall be made by electronic mail or as otherwise prescribed by the commission.
 - (b) *If the damage described in paragraph (a) of this subsection is caused by a communications service provider and no attempt to locate underground facilities was made, the operator shall include in its damage report to the commission the distance from the communications terminal that the damage occurred. The commission shall submit a report to the Legislative Research Commission on or before December 1, 2025, detailing the number of damage reports made under this subsection caused by communications service providers that occurred within the area in which nonintrusive excavation is allowed under subsection (12) of Section 3 of this Act.*
- (5) An operator shall respond to facility locate requests and provide a positive response as follows:
 - (a) To a normal excavation locate request, within two (2) working days after receiving notification from an excavator or any time prior to the scheduled excavation start date if agreed upon as provided in KRS 367.4917(7), excluding large project requests, design information requests, emergency locate requests, and unmapped or untonable facilities;
 - (b) To an emergency locate request, as quickly as possible but not to exceed forty-eight (48) hours after receiving notification from an excavator;
 - (c) To a design information request, within ten (10) working days after receiving notification from the person making the request;
 - (d) To a large project request, within two (2) working days the operator shall notify the excavator that an excavation area has been determined to be a large project, and the operator shall respond to the request within five (5) working days from the later of receiving notification from an excavator or prior to the scheduled excavation start date for that location if agreed upon as provided in KRS 367.4917(7);
 - (e) To an unmapped or untonable facility request, within two (2) working days the operator shall notify the excavator that an excavation area has been determined to be an unmapped or untonable project, and the operator shall respond to the request within five (5) working days for a normal locate request or eight (8) working days for a large project request from the later of receiving notification from an excavator or prior to the scheduled excavation start date if agreed upon as provided in KRS 367.4917(7); and
 - (f) To a fiber-to-the-premises broadband deployment excavation request, in locations not already served by fiber-to-the-premises, within four (4) working days.
- (6) Within one (1) working day after receiving a second notice request from an excavator pursuant to KRS 367.4911(12), an operator shall locate its facility and update the positive response system.
- (7) An operator shall, after receiving an emergency locate request, a normal excavation locate request, an unmapped or untonable locate request, or a large project request as provided in subsection (5) of this section:
 - (a) Inform the excavator of the approximate location and description of any of the operator's underground facilities that may be damaged or pose a safety concern because of excavation or demolition;
 - (b) Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility; and
 - (c) Provide a positive response to the requesting party.
- (8) Upon receiving a design information request, an operator shall contact the person making the request within the time period specified in subsection (5) of this section. The operator shall:

- (a) Designate with temporary underground facility markers the location of all underground facilities owned by the operator within the area of the design information request as defined in KRS 367.4903;
 - (b) Provide to the person making the design information request a description of all underground facilities owned by the operator in the area of the design information request and the location of the facilities, which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the operator; or
 - (c) Allow the person making the design information request or an authorized person to inspect the drawings or other records for all underground facilities with the proposed area of excavation at a location that is acceptable to the operator.
- (9) An operator may reject a design information request and not be held in violation of subsection (6) of this section based upon security considerations or if producing the information will place the operator at a competitive disadvantage, pending the operator obtaining additional information confirming the legitimacy of the notice. The operator shall notify the person making the design information request and may request additional information.
- (10) 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
 - (m) Fiber optic and critical telecommunication Safety alert orange
- (11) If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section. Notification under this subsection shall temporarily relieve the operator of complying with subsections (5) and (6) of this section until the operator can recover from the extraordinary circumstances. Extraordinary circumstances include weather that makes it impossible for any combination of facility markers identified in subsection (10) of this section to be used, extreme weather conditions, force majeure, disasters, or civil unrest that make timely response difficult or impossible.
- (12) 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 3. KRS 367.4915 is amended to read as follows:

Except as provided in KRS 367.4911(9), 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 KRS 367.4903;
- (9) Leak migration testing using metal probes inserted by hand by an authorized representative of the operator;
- (10) Any nonintrusive excavating performed by an operator or his **or her** 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;~~[-or-]~~
- (11) Nonintrusive excavating to inspect or perform maintenance for an existing utility pole; **or**
- (12) ***Connection or disconnection of communications lines within a private or public easement or right-of-way by means of nonintrusive excavating when the depth of the excavations is not greater than twelve (12) inches and is completed within twelve (12) inches of a communications service provider's own communications network.***

Signed by Governor March 29, 2024.