367.4901 Legislative declaration -- Short title for KRS 367.4901 to 367.4917.

The General Assembly finds that the objective of underground facility damage prevention and the resulting benefits of public and workplace safety and protection of consumer services require an effective underground damage prevention procedure. KRS 367.4901 to 367.4917, which may be cited as the "Underground Facility Damage Prevention Act of 1994," are created to provide for this procedure and accomplish this objective.

Effective: January 1, 1995

History: Created 1994 Ky. Acts ch. 425, sec. 1, effective January 1, 1995.

367.4903 Definitions for KRS 367.4903 to 367.4917.

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;

(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 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 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 shall require notification from the operator of the inability to accurately locate the facility;

(12) "Working day" means a twenty-four (24) hour period commencing from the time of receipt of the notification by the Kentucky Contact Center 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, 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" 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; and

(19) "Commission" means the Kentucky Public Service Commission.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 70, sec. 2, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 1, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 1, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 1, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 1, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 1, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 2, effective January 1, 1995.

367.4905 Permit not relieving person from complying with provisions of KRS 367.4905 to 367.4917.

A permit issued pursuant to law authorizing excavation or demolition work shall not relieve a person from the responsibility for complying with KRS 367.4905 to 367.4917.

Effective: January 1, 1995

History: Created 1994 Ky. Acts ch. 425, sec. 3, effective January 1, 1995.

367.4907 Responsibility of persons engaging in nonemergency and emergency work.

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.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 137, sec. 2, effective July 12, 2012. -- Created 1994 Ky. Acts ch. 425, sec. 4, effective January 1, 1995.

367.4909 Operator to provide protection notification center access to excavators -- Kentucky Contact Center -- Report of excavation damage -- Rejection of design information request -- Color coding for temporary underground facility markers -- Operator's inability to comply due to extraordinary circumstances -- Underground facilities installed after January 1, 2013.

(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) 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.

(5) An operator shall respond to facility locate requests as follows:

(a) To a normal excavation locate request within two (2) working days after receiving notification from an excavator, excluding large projects;

(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; and

(d) To a large project request within five (5) working days from the later of receiving notification from an excavator or the scheduled excavation start date for that location.

(6) 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.

(7) 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.

(8) An operator may reject a design information request 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.

(9) 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

(10) 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.

(11) 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.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 70, sec. 3, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 2, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 2, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 3, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 2, effective July 15,

2008. -- Amended 2000 Ky. Acts ch. 222, sec. 2, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 5, effective January 1, 1995.

367.4911 Excavator or person responsible for excavation to notify operator of work schedule -- Responsibilities of excavator.

(1) (a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working 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) 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) 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) 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 each protection notification center.

(6) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.

(7) If, after the two (2) day period provided by KRS 367.4909(5)(a), the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.

(8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period 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) (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) 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) Upon request by an operator or when the proposed excavation location cannot be accurately identified, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(9)(k). After marking the boundaries, the excavator shall contact the protection notification center or centers. The requirements of KRS 367.4909(5) to (10) are reestablished upon the operator receiving notification of this marking from the protection notification center or centers. This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 70, sec. 4, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 3, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 3, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 4, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 3, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 3, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 6, effective January 1, 1995.

367.4913 Duties of protection notification center -- Board of directors of Kentucky Contact Center -- Kentucky Contact Center to serve all counties.

(1) Each protection notification center shall:

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

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

(c) 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);

(d) 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;

(e) 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;

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

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

(2) The Kentucky Contact 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 (1) 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.

(3) The Kentucky Contact Center's board of directors shall establish the method to

calculate the cost of service provided by the center.

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

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 31, sec. 4, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 4, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 5, effective July 12, 2012. -- Amended 2000 Ky. Acts ch. 222, sec. 4, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 7, effective January 1, 1995.

Legislative Research Commission Note (7/12/2012). Under the authority of KRS 7.136(1), the Reviser of Statutes has changed the internal format of this statute from the way it appeared in 2012 Ky. Acts ch. 137, sec. 5, to correct a manifest clerical or typographical error. The words in the text were not changed.

367.4915 Activities exempt from KRS 367.4905 to 367.4917.

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; 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.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 137, sec. 6, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 4, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 5, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 8, effective January 1, 1995.

367.4917 Penalties -- Payment and apportionment of fines -- Enforcement by Public Service Commission -- Administrative regulations.

(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 ($1,000) for each offense.

(4) Any person who violates any provision of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a fine not to exceed one thousand dollars ($1,000) for each offense. The penalties of this subsection are not in conflict with and are in addition to civil damages for personal injury or property damage.

(5) (a) Except as provided in subsection (6) of this section, all fines recovered for a violation of this section shall be paid to the general fund of the state, county, city, or fire protection agency 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.

(c) Failure to comply with the provisions of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at the conclusion of an investigation and shall be based on evidence available to state, county, or city officials, law enforcement, or fire protection agencies which issue the citation.

(6) The commission shall have statewide authority to enforce and assess civil penalties provided for in this section and to seek injunctive relief for any violation that results in damage to an underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. Once the commission initiates an investigation or undertakes an enforcement action against a person for an alleged violation, no other state, county, city, or fire protection agency shall initiate or continue any enforcement action against the person for the same alleged violation. Any action to recover penalties assessed pursuant to this subsection shall be brought in the Franklin Circuit Court. All penalties recovered by the commission shall be paid into the State Treasury and credited to the account of the commission.

(7) The commission may promulgate administrative regulations in accordance with

KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of 1994. The commission shall exercise its authority under the Underground Facility Damage Prevention Act of 1994 in accordance with the rules and procedures set forth in KRS Chapter 278 and all applicable administrative regulations promulgated by the commission.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 70, sec. 5, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 5, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 5, effective July 15, 2014; and ch. 116, sec. 1, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 7, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 5, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 6, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 9, effective January 1, 1995.

Legislative Research Commission Note (7/15/2014). This statute was amended by 2014 Ky. Acts chs. 100 and 116. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 116, which was last enacted by the General Assembly, prevails under KRS 446.250.