

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2178

By Committee on Judiciary

2-7

1 AN ACT concerning utilities; relating to the Kansas underground utility
2 damage prevention act; definitions; location of facilities and duty to
3 mark, exceptions; amending K.S.A. 66-1802 and 66-1806 and
4 repealing the existing sections.

, 66-1805

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 66-1802 is hereby amended to read as follows: 66-
8 1802. As used in this act:

9 (a) "Damage" means any impact or contact with an underground
10 facility, its appurtenances or its protective coating, or any weakening of the
11 support for the facility or protective housing which requires repair.

12 (b) **"Electric public utility" means the same as such term is**
13 **defined in K.S.A. 66-101a, and amendments thereto.**

14 (c) "Emergency" means any condition constituting a clear and present
15 danger to life, health or property, or a customer service outage.

16 ~~(e)~~(d) "Excavation" means any operation in which earth, rock or
17 other material below the surface is moved or otherwise displaced by any
18 means, except tilling the soil for normal agricultural purposes, or railroad
19 or road and ditch maintenance that does not change the existing railroad
20 grade, road grade and/or ditch flowline, or operations related to
21 exploration and production of crude oil or natural gas, or both.

22 ~~(d)~~(e) "Excavator" means any person who engages directly in
23 excavation activities within the state of Kansas, but shall not include any
24 occupant of a dwelling who: (1) Uses such dwelling as a primary
25 residence; and (2) excavates on the premises of such dwelling.

26 ~~(e)~~(f) "Facility" means any sanitary sewer or underground line,
27 system or structure used for transporting, gathering, storing, conveying,
28 transmitting or distributing potable water, gas, electricity, communication,
29 crude oil, refined or processed petroleum, petroleum products or hazardous
30 liquids; facility shall not include, any stormwater sewers or production
31 petroleum lead lines, salt water disposal lines or injection lines, which are
32 not located on platted land or inside the corporate limits of any city.

33 ~~(f)~~(g) "Locatable facility" means facilities for which the tolerance
34 zone can be determined by the operator using generally accepted practices
35 such as as-built construction drawings, system maps, probes, locator
36 devices or any other type of proven technology for locating.

1 dimensions in all horizontal directions of an underground water or
2 wastewater facility upon notification of the excavator, except that a larger
3 tolerance zone may be established by rules and regulations adopted under
4 K.S.A. 66-1815, and amendments thereto.

5 ~~(u)~~(u) "Update" means an additional request from the excavator to
6 extend the time period of the request for intent to excavate beyond the 15
7 calendar day duration of the request.

8 ~~(v)~~(v) "Whitelineing" means the act of marking by the excavator the
9 route or boundary of the proposed excavation site with white paint, white
10 stakes or white flags.

11 ~~(w)~~(w) "Working day" means every day Monday through Friday
12 beginning at 12:01 a.m., except for the following officially recognized
13 holidays: New Year's day, Memorial day, Independence day, Labor day,
14 Thanksgiving day, the day after Thanksgiving and Christmas.

15 ✓Sec. 2. K.S.A. 66-1806 is hereby amended to read as follows: 66-
16 1806. (a) Within two working days, beginning on the later of the first
17 working day after the excavator has filed notice of intent to excavate or the
18 first day after the excavator has whitelined the excavation site, an operator
19 served with notice, unless otherwise agreed between the parties, shall
20 inform the excavator of the tolerance zone of the underground facilities of
21 the operator in the area of the planned excavation by marking, flagging or
22 other acceptable method.

23 (b) If the operator of tier 2 facilities cannot accurately mark the
24 tolerance zone, such operator shall mark the approximate location to the
25 best of its ability, notify the excavator that the markings may not be
26 accurate, and provide additional guidance to the excavator in locating the
27 facilities as needed during the excavation.

28 (c) The operator of tier 2 facilities shall not be required to provide
29 notification of the tolerance zone for facilities which are at a depth at least
30 two feet deeper than the excavator plans to excavate but does have to
31 notify the excavator of their existence.

32 (d) (1) If the operator of a tier 1 facility has no underground facilities
33 in the area of the proposed excavation, such operator, before the
34 excavation start date, shall notify the excavator that it has no facilities in
35 the area of proposed excavation by telephone, facsimile, marking the area
36 all clear or by other technology that may be developed for such purposes.

37 (2) *If the operator of a tier 1 facility is a provider of electricity, the*
38 **duty of the operator** *to mark shall not extend downstream of the point*
39 *where ownership of the facility changes from the operator to another*
40 *person as determined by the operator's rules and regulations, tariffs,*
41 *service or membership agreements or other similar documents.*

42 (e) If the excavator notifies the notification center, within two
43 working days after the initial identification of the tolerance zone by the

Insert Attachment A

And by redesignating sections accordingly

1 operator, that the identifiers have been improperly removed or altered, the
2 operator shall make a reasonable effort to reidentify the tolerance zone
3 within one working day after the operator receives actual notice from the
4 notification center.

5 (f) If the excavator has provided notice to an operator pursuant to
6 K.S.A. 66-1804, and amendments thereto, and the operator fails to comply
7 with subsections (a), (b) or (c) or notifies the excavator that it has no
8 underground facilities in the area of the planned excavation, the excavator
9 may proceed and shall not be liable to the operator for any direct or
10 indirect damages resulting from contact with the operator's facilities,
11 except that nothing in this act shall be construed to hold any excavator
12 harmless from liability to the operator in those cases of gross negligence or
13 willful and wanton conduct.

14 (g) For economic damages in any civil court of this state, failure of an
15 operator to inform the excavator within two working days of the tolerance
16 zone of the underground facilities of the operator in the manner required
17 by ~~subsection (a) of~~ K.S.A. 66-1806(a), and amendments thereto, shall not
18 give rise to a cause of action on the part of the excavator against an
19 operator, except that nothing in this act shall be construed to hold any
20 operator harmless from liability in those cases of inaccurate marking of the
21 tolerance zone, gross negligence or willful and wanton conduct. Such
22 failure may subject an operator to civil penalties as determined by the state
23 corporation commission.

24 (h) Any person claiming that an operator has failed to inform the
25 excavator within two working days of the tolerance zone of the
26 underground facilities of the operator shall file a complaint with the state
27 corporation commission requesting enforcement of subsection (a) within
28 one year of becoming aware of the violation.

29 (i) All tier 1 facilities installed by an operator after January 1, 2003,
30 shall be locatable.

31 (j) All tier 2 facilities installed by an operator after July 1, 2008, shall
32 be locatable.

33 Sec. 3. K.S.A. 66-1802 and 66-1806 are hereby repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
35 publication in the Kansas register.

, 66-1805

Attachment A

Sec. 2. K.S.A. 66-1805 is hereby amended to read as follows: 66-1805. (a) This act recognizes the establishment of a single notification center for the state of Kansas. Each operator who has an underground facility shall become a member of the notification center.

(b) For operators of tier 1 facilities or operators of tier 2 facilities that desire notification in the same manner as operators of tier 1 facilities, the notification center shall provide prompt notice of any proposed excavation to each affected operator that has facilities recorded with the notification center in the area of a proposed excavation site.

(c) For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.

(d) Notification to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

(e) Notification to operators as defined in subsection (c) may be given by notifying the operator of tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

(f) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

(g) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

(h) A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the excavator pursuant to subsection (c) to document the receipt of notices from excavators.

(i) The notification center shall charge and collect an annual membership fee in the amount of \$25 from each tier 2 facility member.

(j) The notification center shall charge a referral fee to tier 2 facility members in an amount no more than 50% of the referral fee rate charged to tier 1 facility members.

(k) Upon request of the operator, the person filing the notice of intent to excavate shall whitenline the proposed excavation site prior to locates being performed.

(l) The notification center established pursuant to this section shall be and is hereby deemed to be a public agency and shall be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, except that the notification center or board of directors, or successor managing organization shall not disseminate, make available or otherwise distribute data or information provided by an operator of a tier 1, 2 or 3 facility unless such dissemination, making available or distributing is necessary for the state corporation commission or the notification center to carry out legal duties or specific statutory duties prescribed under this chapter.

(m) On and after July 1, 2009, the notification center's board of directors shall include two members from tier 2 facilities and 1 member from tier 3 facilities.

(n) The notification center shall prepare an annual report which describes the activities of such center. An annual audit of the notification center shall be conducted by an independent certified public accountant. The notification center shall provide copies of such reports to each member of the notification center and shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

(o) The notification center shall solicit proposals for operation of the notification center not more than every five years which shall be awarded in an open meeting by the board of directors of the notification center. The bidding process prescribed by this subsection shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

(p) The notification center shall conduct a cost of service audit not more than every five years or as otherwise requested by the board of directors of the notification center or a majority of the members of such center.

(q) On and after July 1, 2019, the notification center shall notify any person or excavator requesting identification of the location of underground facilities that utilities are only required to identify the location of utility-owned facilities and are not required to identify the location of privately owned facilities.