

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.

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 ~~(g)~~**(h)** "Marking" means the use of stakes, paint, flags or other clearly
2 identifiable materials to show the field location of underground facilities,
3 in accordance with the rules and regulations promulgated by the state
4 corporation commission in the administration and enforcement of this act.

5 ~~(h)~~**(i)** "Municipality" means any city, county, municipal corporation,
6 public district or public authority located in whole or in part within this
7 state which provides firefighting, law enforcement, ambulance, emergency
8 medical or other emergency services.

9 ~~(i)~~**(j)** "Notification center" means the statewide communication
10 system operated by an organization which has as one of its purposes to
11 receive and record notification of planned excavation in the state from
12 excavators and to disseminate such notification of planned excavation to
13 operators who are members and participants.

14 ~~(j)~~**(k)** "Operator" means any person who owns or ~~operates~~ leases an
15 underground tier 1 or tier 2 facility, ~~except for. "Operator" does not mean~~
16 any person who is:

17 (1) The owner of real property wherein is located underground
18 facilities for the purpose of furnishing services or materials only to such
19 person or occupants of such property; or

20 (2) *providing electric service for that portion of an underground*
21 *facility downstream of the point where ownership of the facility changes*
22 *from the operator an electric public utility to another person as*
23 *determined by the operator's electric public utility's rules and regulation,*
24 *tariffs, service or membership agreement or other similar documents.*

25 ~~(k)~~**(l)** "Preengineered project" means a public project or a project
26 which is approved by a public agency wherein the public agency
27 responsible for the project, as part of its engineering and contract
28 procedures, holds a meeting prior to the commencement of any
29 construction work on such project in which all persons, determined by the
30 public agency to have underground facilities located within the
31 construction area of the project, are invited to attend and given an
32 opportunity to verify or inform the public agency of the location of their
33 underground facilities, if any, within the construction area and where the
34 location of all known and underground facilities are duly located or noted
35 on the engineering drawing as specifications for the project.

36 ~~(l)~~**(m)** "Permitted project" means a project where a permit for the
37 work to be performed must be issued by a city, county, state or federal
38 agency and, as a prerequisite to receiving such permit, the applicant must
39 locate all underground facilities in the area of the work and in the vicinity
40 of the excavation and notify each owner of such underground facilities.

41 ~~(m)~~**(n)** "Person" means any individual, partnership, corporation,
42 association, franchise holder, state, city, county or any governmental
43 subdivision or instrumentality of a state and its employees, agents or legal

1 representatives.

2 ~~(n)~~**(o)** "Production petroleum lead line" means an underground
3 facility used for production, gathering or processing on the lease or unit, or
4 for delivery of hydrocarbon gas and/or liquids to an associated tank
5 battery, separator or sales facility. Production petroleum lead lines shall
6 include underground lines associated with lease fuel and saltwater disposal
7 and injection.

8 ~~(o)~~**(p)** "Platted land" means a tract or parcel of land which has been
9 subdivided into lots of less than five acres for the purpose of building
10 developments, including housing developments, and for which a
11 surveyor's plat has been filed of record in the office of the register of deeds
12 in the county where the land is located.

13 ~~(p)~~**(q)** "Tier 1 facility" means an underground facility used for
14 transporting, gathering, storing, conveying, transmitting or distributing
15 gas, electricity, communications, crude oil, refined or reprocessed
16 petroleum, petroleum products or hazardous liquids.

17 ~~(q)~~**(r)** "Tier 2 facility" means an underground facility used for
18 transporting, gathering, storing, conveying, transmitting or distributing
19 potable water or sanitary sewage.

20 ~~(r)~~**(s)** "Tier 3 facility" means a water or wastewater system utility
21 which serves more than 20,000 customers who elects to be a tier 3 member
22 of the notification center pursuant to this subsection. The operator of a tier
23 3 facility shall:

24 (1) Develop and operate a locate service website capable of receiving
25 locate requests;

26 (2) publish and maintain a dedicated telephone number for locate
27 services;

28 (3) maintain 24-hour response capability for emergency locates; and

29 (4) employ not less than two individuals whose primary job function
30 shall be the location of underground utilities. Operators of tier 3 facilities
31 shall make either such website or contact information available to the
32 notification center. The notification center shall collect and charge a fee of
33 \$500 a year for each tier 3 facility. No other fee, charge or cost shall be
34 assessed to a tier 3 facility by the notification center. Tier 3 members shall
35 be subject to all provisions of K.S.A. ~~66-1805 through 66-1810~~ *66-1801 et*
36 *seq.*, and amendments thereto.

37 ~~(s)~~**(t)** "Tolerance zone" means the area not less than 24 inches of the
38 outside dimensions in all horizontal directions of an underground facility,
39 except that a larger tolerance zone for a tier 1, 2 or 3 facility may be
40 established by rules and regulations adopted under K.S.A. 66-1815, and
41 amendments thereto. An operator of a water or wastewater facility may
42 elect to use a tolerance zone for such water or wastewater facility in which
43 tolerance zone means the area not less than 60 inches of the outside

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) "Whitelining" 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

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.