

1 **As Amended by House Committee**

2 *Session of 2001*

3
4 **HOUSE BILL No. 2521**

5
6 By Committee on Appropriations

7
8 2-16
9

10 AN ACT amending and supplementing the Kansas underground utility
11 damage prevention act; amending K.S.A. 2000 Supp. 66-1801, 66-
12 1802, 66-1803, 66-1811, 66-1812 and 66-1813 and repealing the exist-
13 ing sections; also repealing K.S.A. 2000 Supp. 66-1804, 66-1805, 66-
14 1806, 66-1807, 66-1809 and 66-1810.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. **On and after January 1, 2002**, K.S.A. 2000 Supp. 66-
18 1801 is hereby amended to read as follows: 66-1801. (a) This act shall be
19 known and may be cited as the Kansas underground utility damage pre-
20 vention act.

21 (b) *This act prescribes minimum requirements for operators of un-*
22 *derground facilities, excavators and a notification center regarding re-*
23 *quests for locating underground facilities and the subsequent locating of*
24 *such facilities.*

25 Sec. 2. **On and after January 1, 2002**, K.S.A. 2000 Supp. 66-1802
26 is hereby amended to read as follows: 66-1802. As used in this act:

27 (a) "Damage" means:

28 (1) Any impact or contact with an underground facility, or its appur-
29 tenances or its protective coating, ~~or~~, *which requires repair;*

30 (2) any weakening of the support for the facility, or its protective
31 housing, which requires repair; or

32 (3) *any failure to properly replace the backfill surrounding an un-*
33 *derground facility.*

34 (b) "Emergency" means any condition ~~constituting~~ *which constitutes*
35 *a clear and present danger to life, health or property; or a customer serv-*
36 *ice outage which requires immediate corrections in order to assure con-*
37 *tinuity of service to a customer.*

38 (c) "Excavation" means any operation in which earth, rock or other
39 material below the surface is moved or otherwise displaced by any means,
40 ~~except~~ *with the following exceptions:*

41 (1) *Tilling the soil, or to a depth of less than 20 inches for normal*
42 *agricultural purposes;*

43 (2) railroad or road and ditch maintenance that does not change the

1 existing railroad grade, road grade and/or ditch flowline, ~~or~~; or
2 (3) operations related to exploration and production of crude oil or
3 natural gas, or both, *that do not take place in a public access right-of-*
4 *way.*

5 (d) “Excavator” means any person who engages directly in excavation
6 activities within the state of Kansas, but shall not include any occupant
7 of a dwelling who:

8 (1) Uses such dwelling as a primary residence; and

9 (2) excavates on the premises of such dwelling.

10 (e) (1) “Facility” means any underground line, system or structure
11 used for *transporting*, gathering, storing, conveying, transmitting or dis-
12 tributing gas, electricity, communication, crude oil, refined or processed
13 petroleum, petroleum products ~~or~~, hazardous liquids~~;~~, *sewage, potable*
14 *water or other liquids.*

15 (2) Facility shall not include~~, any the following:~~

16 (A) ~~Storm water sewers installed before January 1, 2002; or (B) pro-~~
17 ~~duction petroleum lead lines, salt water disposal lines or injection lines,~~
18 ~~which are located on unplatted land or but only if such lines are not~~
19 ~~located on platted land and are located outside of any public access right-~~
20 ~~of way and more than one mile outside the corporate limits of any city~~
21 **which are used in the production of natural gas, but only if such**
22 **lines are located outside any public access right-of-way or if such**
23 **lines are located inside a public access right-of-way but are clearly**
24 **marked in a manner sufficient to provide notice of their location;**
25 **(C) other production petroleum lead lines located on unplatted**
26 **land outside the corporate limits of any city; (D) any rural water**
27 **district facility exempt from the provisions of this act pursuant to**
28 **section 10, and amendments thereto; or (E) facilities used to con-**
29 **vey communications or electricity to street lights or traffic control**
30 **devices or used to provide utility service to a public rest area fa-**
31 **ilities if: (i) Such facilities are owned and operated by a public**
32 **entity; (ii) the easement where such facilities are located is owned**
33 **or controlled by the public entity; and (iii) an excavator, before**
34 **excavating in the easement, is required to obtain from the public**
35 **entity a permit which requires, at a minimum, that the excavator**
36 **comply with the provisions of this act at the proposed excavation**
37 **site.**

38 (f) “Locatable facility” means facilities for which the tolerance zone
39 can be determined by the operator using generally accepted practices such
40 as *as-built construction drawings, system maps, probes, locator devices*
41 *and other types of proven technology for locating.*

42 (g) “Marking” means the use of stakes, paint, *flags* or other clearly
43 identifiable materials to show the field location of underground facilities,

1 in accordance with ~~the resolution adopted August, 1984, by resolutions~~
 2 ~~of the utility location coordination council of the American public work~~
 3 ~~works~~ association.

4 (h) “Meet on site” means a meeting between a facility operator and
 5 excavator which occurs at the site of the proposed excavation.

6 ~~(g)~~ (i) “Municipality” means any city, county, municipal corporation,
 7 public district or public authority located in whole or in part within this
 8 state which provides firefighting, law enforcement, ambulance, emer-
 9 gency medical or other emergency services.

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

15 ~~(i)~~ (k) “Operator” means any person who owns or operates an un-
 16 derground facility, except for any person who is the owner of real property
 17 wherein is located underground facilities for the purpose of furnishing
 18 services or materials only to such person or occupants of such property.

19 ~~(j)~~ (l) “Preengineered project” means a public project ~~or a project~~
 20 which is approved by a public agency ~~wherein and, as part of its engi-~~
 21 ~~neering and contract procedures:~~

22 (1) The public agency responsible for the project, ~~as part of its en-~~
 23 ~~gineering and contract procedures,~~ holds a meeting prior to the com-
 24 mencement of any construction work on such project in which all persons,
 25 determined by the public agency to have underground facilities located
 26 within the construction area of the project, are invited to attend and given
 27 an opportunity to verify or inform the public agency of the location of
 28 their underground facilities, if any, within the construction area ~~and~~
 29 ~~where;~~

30 (2) the location of all known ~~and~~ underground facilities are duly lo-
 31 cated or noted on ~~the updated engineering drawing~~ drawings as specifi-
 32 cations for the project; *and*

33 (3) *additional meetings will be held in which all persons determined*
 34 *by the public agency to have underground facilities located within the*
 35 *construction area of the project are invited to attend if any changes to the*
 36 *engineering drawings occur after the ~~initial meeting~~ meeting conducted*
 37 **in accordance with subsection (l)(1).**

38 ~~(k)~~ (m) “Permitted project” means a project where a permit for the
 39 work to be performed:

40 (1) Must be issued by a city, county, state or federal agency; and;

41 (2) *has as a prerequisite to receiving such permit, a requirement that*
 42 *the applicant must locate all underground facilities in the area of the work*
 43 *and in the vicinity of the excavation and notify each owner of such un-*

1 derground facilities.

2 ~~(n)~~ (n) “Person” means any individual, partnership, corporation, as-
3 sociation, franchise holder, state, city, county or any governmental sub-
4 division or instrumentality of a state and its employees, agents or legal
5 representatives.

6 (o) *“Platted land” means a tract or parcel of land that has been di-*
7 ~~*vided into two or more parts for the purpose of sale or*~~ **subdivided for**
8 **the purpose of building developments, including housing subdivisions,**
9 **and for which a surveyor’s plat has been filed of record in the office**
10 **of the register of deeds in the county where the land is located.**

11 (p) *“Production petroleum lead line” means underground facilities*
12 *used for production, gathering and preparation for delivery of hydrocar-*
13 *bon gas and/or liquids. Such facilities include underground lines associ-*
14 *ated with fuel and those associated with salt water disposal and injection.*

15 (q) *“Public access right-of-way” means any* ~~*public street or highway*~~
16 ~~*and the contiguous area within 75 feet of each side of the right of way of*~~
17 ~~*such street or highway*~~ **federal highway, state highway, county road**
18 **or township road, and the right-of-way associated with such high-**
19 **way or road.**

20 (r) *“Reasonable care” means the precautions taken by excavators to*
21 *conduct an excavation in a careful and prudent manner, including exca-*
22 *vation by hand, to determine the precise location of an underground fa-*
23 *cility. Reasonable care includes, but is not limited to, maintaining a rea-*
24 *sonable clearance between any marked underground facility and the*
25 *cutting edge or point of any mechanized equipment.*

26 (s) *“Tier 1 facility” means an underground facility used for trans-*
27 *porting, gathering, storing, conveying, transmitting or distributing gas,*
28 *electricity, communication, crude oil, refined or reprocessed petroleum,*
29 *petroleum products or hazardous liquids.*

30 (t) *“Tier 2 facility” means an underground facility used for trans-*
31 *porting, gathering, storing, convey, transmitting or distributing potable*
32 *water or sewage, including storm sewers constructed on or after January*
33 *1, 2002.*

34 ~~(u)~~ (u) *“Tolerance zone” means the area within 24 inches of the*
35 *outside dimensions in all horizontal directions of an underground facility.*

36 (v) *“Update” means an additional request from the excavator to ex-*
37 *tend the time period of the request for intent to excavate beyond the 15*
38 *calendar day duration of the request.*

39 (w) *“Whitelineing” means as an excavator’s act of marking the route*
40 *or boundary of a proposed excavation site with white paint, white stakes*
41 *or white flags.*

42 ~~(x)~~ (x) *“Working day” means every day Monday through Friday be-*
43 *ginning at 12:01 a.m., except Saturday, Sunday or a legally proclaimed*

1 ~~local, state or federal holiday~~ for the following officially recognized holi-
2 days: New Year's day, Memorial day, Independence day, Labor day,
3 Thanksgiving day, the day after Thanksgiving day and Christmas day.

4 Sec. 3. **On and after January 1, 2002**, K.S.A. 2000 Supp. 66-1803 is
5 hereby amended to read as follows: 66-1803. (a) *This statute prescribes*
6 *minimum requirements for excavators regarding a request for locating*
7 *underground facilities and subsequent excavating operations near or ad-*
8 *acent to such facilities.*

9 (b) An excavator shall not engage in excavation near the location of
10 any underground facility without first having ascertained, in the manner
11 prescribed in this ~~act~~ *section*, a location of all underground facilities in
12 the proposed area of the excavation.

13 (c) *Except in the case of an emergency, an excavator shall give notice*
14 *of intent to excavate on each operator having underground facilities lo-*
15 *cated in the proposed area of excavation as follows:*

16 (1) ~~the~~ **The** *notice of intent to excavate shall be given no earlier than*
17 *15 calendar days before the excavation is to begin.*

18 (2) *The notice of intent to excavate shall be given no later than two*
19 *full working days before the excavation is to begin. The two full working*
20 *days do not include the day notice of intent to excavate is filed with the*
21 *notification center.*

22 (3) *Notice of intent to excavate shall be given by notifying the noti-*
23 *fication center through communication methods approved by the center;*
24 ~~*including telephone and facsimile.*~~

25 (4) *For Tier 2 members of the notification center, notice of intent to*
26 *excavate shall be given by directly notifying the operator at the telephone*
27 *number provided by the notification center.*

28 (d) *The notice of intent to excavate or any subsequent updates shall*
29 *be valid for 15 calendar days after the ~~date the excavation starts~~ **sched-***
30 *uled excavation start date.*

31 (e) *The notice of intent to excavate shall contain:*

32 (1) ~~the~~ **The** *name, address and telephone number of the person giving*
33 *the notice of intent of excavation;*

34 (2) *the name of the excavator;*

35 (3) *the date the excavation activity is to commence;*

36 (4) *the type **and depth** of excavation being planned; and*

37 (5) *a description of the excavation, including;*

38 (A) ~~the~~ **The** *street address, if available, and the location of the exca-*
39 *vation at the street address;*

40 (B) **at the request of the operator**, *an accurate description of the*
41 *excavation area using any available designations such as closest street,*
42 *road, intersection or additional information as requested by the notifi-*
43 *cation center; or*

1 (C) the specific legal description down to the level of a quarter section,
2 including longitude and latitude coordinates if possible, if the planned
3 activity is outside the boundaries of any city;

4 (f) The excavator shall have at the excavation site the description in-
5 cluded in the the notice of intent to excavate and the locate ticket number
6 issued by the notification center.

7 (g) The person giving the notice of intent to excavate shall whieline
8 the proposed excavation site when ~~the description of~~ the excavation lo-
9 cation cannot be described with sufficient detail to enable the operator to
10 ascertain the precise tract or parcel involved. If marking a proposed ex-
11 cavation site in that manner is impractical, an excavator or an operator
12 may request a meet on site.

13 (h) If either party requests a meet on site as part of the description
14 of the proposed excavation, the party requesting the meet shall document
15 the meet on site and any subsequent meetings with a record signed by
16 representatives of the excavator and the operator.

17 (i) The notice of intent to excavate shall only describe an area in which
18 the proposed excavation can reasonably be completed within 15 calendar
19 days after the date on which excavation is scheduled to begin.

20 (j) No person shall make repeated requests for remarking, unless the
21 request is due to circumstances not reasonably within the control of such
22 person.

23 (k) Except for the requirement to serve notice of intent to excavate as
24 provided in subsections (c)(3) and (c)(4), the provisions of subsections (c)
25 and (d) shall not apply to a preengineered project or a permitted project.

26 (l) In the case of an emergency, notice of intent to excavate without
27 the use of explosives shall be given to the notification center as soon as
28 possible. However, excavation may commence prior to a response from
29 the operator. ~~any~~ Any person providing a misrepresentation of an emer-
30 gency excavation may be subject to the penalties provided in K.S.A. 2000
31 Supp. 66-1812, and amendments thereto.

32 (m) Upon receiving information giving the approximate location of
33 ~~under ground~~ **underground** facilities as provided in sections 8 and 9,
34 and amendments thereto, and when there is evidence of the existence of
35 underground facilities in and near the construction area, an excavator
36 shall exercise such reasonable care as may be necessary for the protection
37 of any underground facility, including, but not limited to:

38 (1) Reasonable steps necessary to properly protect, support and back-
39 fill underground facilities.

40 (2) If the proposed excavation will use an excavation technique, ~~such~~
41 ~~as boring or cable plowing~~, that does not allow the excavator to visually
42 observe the placement of the new facility, **the excavator shall make** a
43 reasonable attempt, by pot holing or hand digging before the excavation

1 ~~begins, to determine the depth of~~ **determine that the excavation for**
 2 **the new facility will not interfere with any facilities located in and**
 3 **near the proposed excavation site.**

4 (3) Reasonable steps to maintain the markings that indicate the lo-
 5 cation of underground facilities throughout the excavation period.

6 (n) An excavator using a trenchless excavation technique shall meet
 7 minimum operating guidelines as prescribed in rules and regulations
 8 adopted by the state corporation commission pursuant to this act.

9 (o) Excavation activity may begin ~~two working days after the day on~~
 10 ~~which the notice of intent to excavate has been given~~ **on the scheduled**
 11 **excavation start date** or when all facilities in and near the proposed
 12 excavation site are marked by the operator, whichever occurs sooner. ~~If~~
 13 ~~a meet on site is requested, the excavation activity may begin two working~~
 14 ~~days after the meet on site has occurred or when all facilities in and near~~
 15 ~~the proposed excavation site are marked by the operator, whichever oc-~~
 16 ~~urs sooner.~~

17 (p) Notwithstanding the lack of accurate information provided by an
 18 operator pursuant to sections 8 and 9, and amendments thereto, no ex-
 19 cavator shall proceed in an excavation activity ~~that results in gross neg-~~
 20 ~~ligence or willful and wanton~~ **with negligent** disregard of underground
 21 facilities.

22 (q) When any contact with or damage to any underground facility
 23 occurs, the excavator shall immediately inform the operator.

24 (r) If contact with or damage to any underground facility results in
 25 penetration of the protective covering of an electrical line or in the release
 26 of dangerous gases or fluids, the excavator immediately shall inform emer-
 27 gency personnel of the municipality or area in which the electrical short
 28 or broken line is located and take any other action as may be reasonably
 29 necessary to protect persons and property and to minimize the hazards
 30 until arrival of the operator's personnel or police and fire departments.

31 Sec. 4. **On and after January 1, 2002**, K.S.A. 2000 Supp. 66-1811
 32 is hereby amended to read as follows: 66-1811. (a) In a civil action in a
 33 court of this state when it is shown by competent evidence that personal
 34 injury, death or other damages, ~~including damage to any underground~~
 35 ~~facilities~~, occurred as a result of a violation of this act, there shall be a
 36 rebuttable presumption of negligence on the part of the violator.

37 (b) The provisions of subsection (a) shall not apply if the operator
 38 whose underground facilities are damaged fails to participate in the no-
 39 tification center.

40 (c) ~~In no event shall~~ *If an excavator uses reasonable care while ex-*
 41 *cavating, the excavator shall not be responsible for any associated damage*
 42 *that occurs as a result of damage to underground facilities if such damage*
 43 *was caused by the failure of the operator to correctly and properly mark*

1 the location of the tolerance zone of the damaged facility *within the time*
2 *requirements set out in subsection (c) of section 8 and subsection (d) of*
3 *section 9, and amendments thereto.*

4 (d) *If an excavator uses reasonable care while excavating, the exca-*
5 *vator shall not be responsible for any associated damage that occurs as a*
6 *result of damage to underground facilities if the underground facility*
7 *damage was caused by the operator of tier 2 facilities electing to not locate*
8 *such facilities as allowed by subsection (d)(3) of section 9, and amend-*
9 *ments thereto.*

10 (e) Nothing in this act is intended to limit or modify the provisions
11 of:

12 (1) K.S.A. 60-258a, and amendments thereto; or

13 (2) the national electrical safety code, which would otherwise be
14 applicable.

15 Sec. 5. **On and after January 1, 2002**, K.S.A. 2000 Supp. 66-1812
16 is hereby amended to read as follows: 66-1812. Any person to whom this
17 act applies, who violates any of the provisions contained in this act, shall
18 be subject to civil penalties and injunctive relief as set out in K.S.A. 66-
19 1,151, and amendments thereto, *and any remedies established is in rules*
20 *and regulations adopted by the state corporation commission pursuant to*
21 *this act.*

22 Sec. 6. **On and after January 1, 2002**, K.S.A. 2000 Supp. 66-1813
23 is hereby amended to read as follows: 66-1813. (a) This act shall be ad-
24 ministered and enforced by the state corporation commission ~~of the state~~
25 ~~of Kansas.~~

26 (b) *The state corporation commission shall adopt rules and regula-*
27 *tions to administer and enforce the provisions of this act.*

28 New Sec. 7. (a) This act recognizes the establishment of a single
29 notification center for the state of Kansas.

30 (b) The notification center shall provide prompt notice of any pro-
31 posed excavation to each affected operator that is a tier 1 member of ~~the~~
32 the notification center and has facilities recorded with the notification
33 center in the area of a proposed excavation site.

34 (c) The notification center shall also provide the excavator with the
35 name and telephone number of each operator that is a tier 2 member
36 and has facilities recorded with the notification center in the area of the
37 proposed excavation.

38 (d) The notification center shall maintain for a period of four years a
39 suitable record to document the receipt of notices of intent to excavate,
40 including:

41 (1) ~~An audio~~ **A** record of each notice of intent to excavate; and

42 (2) a written or electronic version of the notification sent to each
43 operator that is a tier 1 member.

1 (e) Upon request, a copy of the record documenting notice of intent
2 to excavate shall be furnished by an operator or by the notification center
3 to the state corporation commission or to the person giving the notice of
4 intent to excavate.

5 (f) The notification center shall establish and maintain a quality control
6 program that assures adequate training of employees receiving and
7 recording notices of intent to excavate.

8 (g) This section shall be part of and supplemental to the Kansas underground
9 utility damage prevention act.

10 **(h) The provisions of this section shall take effect and be in**
11 **force from and after January 1, 2002.**

12 New Sec. 8. (a) This statute prescribes minimum requirements for
13 operators of tier 1 facilities regarding their responsibilities to mark the
14 location of their facilities for the area described in the notice of intent to
15 excavate.

16 (b) Each operator of a tier 1 facility shall become a tier 1 member of
17 the notification center. Tier 1 membership shall require the operator to:

18 (1) File and maintain with the notification center accurate maps of
19 the operator's underground facilities or a map showing the operator's
20 service area;

21 (2) file and maintain current operator telephone contact numbers
22 that can be accessed on a 24-hour-per-day basis; and

23 (3) pay costs incurred by the notification center for maintaining an
24 accurate database of tier 1 members' facilities and disseminating information
25 regarding those facilities to excavators.

26 (c) Within two working days, beginning on the first working day after
27 an excavator has filed a notice of intent to excavate **or before the scheduled excavation start date**, an operator of tier 1 facilities, unless otherwise agreed between the parties, shall:

30 (1) inform the excavator of the location of the operator's underground
31 facilities in the area described in the intent to excavate; or

32 (2) notify the excavator that the operator has no facilities in the area
33 described in the notice of intent to excavate.

34 (d) The operator of a tier 1 facility shall inform an excavator of the
35 location of such facility by marking the location of the facility by flags,
36 paint or other acceptable methods. If a tier 1 facility has outside dimensions
37 of eight inches or larger, the operator of the facility shall mark the
38 facility in such a way that the tolerance zone of the facility can be easily
39 determined by the excavator. If a tier 1 facility has outside dimensions of
40 less than eight inches, the operator of the facility shall mark the facility
41 such that the location of the facility can be easily determined by the
42 excavator.

43 (e) If the description listed in the notice of intent to excavate requests

1 a meet on site, the operator of a tier 1 facility shall attend a meeting on
2 a mutually agreed schedule but will have two working days after the meet
3 on site to complete marking the area.

4 (f) If an operator of a tier 1 facility has no underground facilities in
5 the area of a proposed excavation, such operator, before the excavation
6 start date, shall notify the excavator that the operator has no facilities in
7 the area of proposed excavation. The notice shall be made by telephone,
8 facsimile, marking the area all clear or other means that may be developed
9 for such purposes.

10 (g) If an excavator, within two working days after the initial identifi-
11 cation of the location by the operator, notifies the notification center that
12 the identifiers have been improperly removed or altered, the operator
13 shall make a reasonable effort to reidentify the location within one work-
14 ing day after the operator receives actual notice from the notification
15 center.

16 (h) If an operator of a tier 1 facility receives a request to locate the
17 operator's facilities in an emergency, the operator shall make a reasonable
18 effort to identify the location of the operator's facilities within two hours
19 after receiving the request or before excavation is scheduled to begin,
20 whichever is later.

21 (i) Upon receiving notice from an excavator of any contact with or
22 damage to an underground facility, the operator shall immediately dis-
23 patch personnel to the location to provide necessary temporary or per-
24 manent repair of the damage.

25 (j) Each operator of a tier 1 facility shall file an incident of damage
26 report with the state corporation commission as provided in rules and
27 regulations adopted by the commission pursuant to this act.

28 (k) All facilities installed on or after January 1, 2002, by an operator
29 of a tier 1 facility shall be locatable.

30 (l) This section shall be part of and supplemental to the Kansas un-
31 derground utility damage prevention act.

32 **(m) The provisions of this section shall take effect and be in**
33 **force from and after January 1, 2002.**

34 New Sec. 9. (a) This statute prescribes minimum requirements for
35 operators of tier 2 facilities regarding their responsibilities for compliance
36 with the Kansas underground utility damage prevention act.

37 (b) Each operator of a tier 2 facility shall become either a tier 1 or
38 tier 2 member of the notification center. Tier 2 membership shall require
39 the operator to:

40 (1) File and maintain with the notification center accurate maps of
41 the operator's underground facilities or a map showing the operator's
42 service area;

43 (2) file and maintain current operator telephone contact numbers

1 that can be accessed on a 24-hour-per-day basis; and

2 (3) pay costs incurred by the notification center for maintaining an
3 ~~accurate~~ a database of tier 2 members' facilities and disseminating infor-
4 mation regarding those facilities to excavators.

5 (c) Upon receiving a request from an excavator to locate facilities, a
6 tier 2 member shall:

7 (1) Maintain, for a period of four years, a record for each excavator
8 request received, including the notification center locate reference num-
9 ber; and

10 (2) assign a unique facility reference number for each excavator
11 request.

12 (d) Within two working days, beginning on the first working day after
13 being notified of an intent to excavate **or before the scheduled exca-**
14 **vation start date**, an operator of tier 2 facilities shall:

15 (1) Inform the excavator of the location of the operator's under-
16 ground facilities in the area described in the intent to excavate, unless
17 otherwise agreed between the parties;

18 (2) notify the excavator that the operator has no facilities in the area
19 described in the notice of intent to excavate; or

20 (3) notify the excavator that the operator has facilities in the area
21 described in the notice of intent to excavate but elects to not locate these
22 facilities.

23 (e) The operator of a tier 2 facility shall inform an excavator of the
24 location of such facility by marking the location of the facility by flags,
25 paint or other acceptable methods. If a tier 2 facility has outside dimen-
26 sions of eight inches or larger, the operator of the facility shall mark the
27 facility is such a way that the tolerance zone of the facility can be easily
28 determined by the excavator. If a tier 2 facility has outside dimensions of
29 less than eight inches, the operator of the facility shall mark the facility
30 such that the location of the facility can be easily determined by the
31 excavator.

32 (f) If an excavator, within two working days after the initial identifi-
33 cation of the location by the operator, ~~notifies the notification center of~~
34 **a tier 2 facility, notifies such operator** that the identifiers have been
35 improperly removed or altered, ~~the such~~ operator shall make a reasonable
36 effort to reidentify the location within one working day after ~~the such~~
37 operator receives actual notice from the ~~notification center~~ **excavator**.

38 (g) If an operator of a tier 2 facility receives a request to locate the
39 operator's facilities in an emergency, the operator shall make a reasonable
40 effort to comply with the provisions of subsection (d)(1) or (d)(3) within
41 two hours after receiving the request or before excavation is scheduled
42 to begin, whichever is later.

43 (h) Each operator of a tier 2 facility shall file an incident of damage

1 report with the state corporation commission as provided in rules and
2 regulations adopted by the commission pursuant to this act.

3 (i) All facilities installed on or after January 1, 2002, by an operator
4 of a tier 2 facility shall be locatable.

5 (j) This section shall be part of and supplemental to the Kansas un-
6 derground utility damage prevention act.

7 **(k) The provisions of this section shall take effect and be in**
8 **force from and after January 1, 2002.**

9 **New Sec. 10. (a) The board of directors of any rural water dis-**
10 **trict organized or operating under the authority of K.S.A. 82a-612**
11 ***et seq.*, and amendments thereto, may elect to exempt the facilities**
12 **of such district from the provisions of this act by adopting and filing**
13 **with the state corporation commission, before January 1, 2002, a**
14 **resolution of the board providing for such exemption. Such board**
15 **of directors subsequently may elect to make the facilities of such**
16 **district subject to the provisions of this act by adopting and filing**
17 **with the state corporation commission, a resolution of the board**
18 **providing for such facilities to be subject to the provisions of this**
19 **act.**

20 **(b) Once the facilities of a rural water district organized or**
21 **operating under the authority of K.S.A. 82a-612 *et seq.*, and amend-**
22 **ments thereto, are subject to the provisions of this act, the board**
23 **of directors of such rural water district shall not have authority**
24 **thereafter to exempt the facilities of such district from the provi-**
25 **sions of this act.**

26 **(c) This section shall be part of and supplemental to the Kansas**
27 **underground utility damage prevention act.**

28 ~~Sec. 10. 11.~~ **On and after January 1, 2002,** K.S.A. 2000 Supp. 66-
29 1801, 66-1802, 66-1803, 66-1804, 66-1805, 66-1806, 66-1807, 66-1809,
30 66-1810, 66-1811, 66-1812 and 66-1813 are hereby repealed.

31 ~~Sec. 11. 12.~~ This act shall take effect and be in force from and after
32 ~~January 1, 2002,~~ and its publication in the statute book.

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