

FIRST REGULAR SESSION

# HOUSE BILL NO. 425

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES O'TOOLE, GAMBARO, BURTON, MAYS (50), HICKEY, FOLEY, McKENNA (Co-sponsors), MONACO, HOLT, GEORGE, GREEN (15), LUETKENHAUS, THOMPSON, ST. ONGE, LEVIN, GRAHAM, WAGNER, ABEL, JOHNSON (90), FRANKLIN, BOWMAN, KENNEDY, CURLS, LOWE AND WILSON (42).

Read 1<sup>st</sup> time January 18, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1254L.011

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### AN ACT

To repeal sections 319.015, 319.022, 319.023, 319.024, 319.025, 319.026, 319.030, 319.045 and 319.050, RSMo 2000, relating to underground facility safety and damage prevention, and to enact in lieu thereof eleven new sections relating to the same subject, with an expiration date for a certain section.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 319.015, 319.022, 319.023, 319.024, 319.025, 319.026, 319.030, 2 319.045 and 319.050, RSMo 2000, are repealed and eleven new sections enacted in lieu thereof, 3 to be known as sections 319.015, 319.022, 319.023, 319.024, 319.025, 319.026, 319.030, 4 319.037, 319.041, 319.045 and 319.050, to read as follows:

319.015. For the purposes of sections 319.010 to 319.050, the following terms mean:

2 (1) "Approximate location", a strip of land not wider than the width of the underground 3 facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity 4 of adjacent facilities or other unusual specified conditions interfere with location attempts, the 5 owner or operator shall designate to the best of his **or her** ability an approximate location of 6 greater width;

7 (2) "Excavation", any operation in which earth, rock or other material in or on the ground 8 is moved, removed or otherwise displaced by means of any tools, equipment or explosives and 9 includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, 10 well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in,

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

11 ripping, driving, and demolition of structures, except that, the use of mechanized tools and  
12 equipment to break and remove pavement and masonry down only to the depth of such pavement  
13 or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and  
14 other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed  
15 excavation. Backfilling or moving earth on the ground in connection with other excavation  
16 operations at the same site shall not be deemed separate instances of excavation. **For railroads**  
17 **regulated by the Federal Railroad Administration, neither adjusting ballast on top of**  
18 **railroad roadbeds nor the replacing of railroad ties and related appliances, excluding work**  
19 **at road crossings, shall be deemed excavation;**

20 (3) "Marking", the use of stakes, paint or other clearly identifiable materials to show the  
21 field location of underground facilities, or the area of proposed excavation, in accordance with  
22 the color code standard of the American Public Works Association. Unless otherwise provided  
23 by the American Public Works Association, the following color scheme shall be used[, unless  
24 otherwise agreed to by both parties or their authorized agents]: blue for **potable water; purple**  
25 **for reclaimed** water, irrigation and slurry lines; green for sewers and drain lines; red for electric,  
26 power lines, cables, conduit and lighting cables; orange for communications, including  
27 telephone, **cable television**, alarm or signal lines, cable or conduit; yellow for gas, oil, steam,  
28 petroleum or gaseous materials; white for [area of] proposed excavation; [fluorescent] pink for  
29 temporary marking of construction project site features such as centerline and top of slope and  
30 toe of slope;

31 (4) "Notification center", [an] **a statewide** organization operating **twenty-four hours**  
32 **a day, three hundred sixty-five days a year** on a not-for-profit basis, supported by its  
33 participants, or by more than one operator of underground facilities, having as its principal  
34 purpose the statewide receipt and dissemination to participating owners and operators of  
35 underground facilities of information concerning intended excavation activities in the area where  
36 such owners and operators have underground facilities, and open to participation by any and all  
37 such owners and operators on a fair and uniform basis. **Such notification center shall be**  
38 **governed by a board of directors elected by the membership and composed of**  
39 **representatives from each general membership group;**

40 (5) "Permitted project", a project for which a permit for the work to be performed is  
41 required to be issued by a local, state or federal agency and, as a prerequisite to receiving such  
42 permit, the applicant is required to locate all underground facilities in the area of the work and  
43 in the vicinity of the excavation and is required to notify each owner of such underground  
44 facilities;

45 (6) "Person", any individual, firm, joint venture, partnership, corporation, association,  
46 cooperative, municipality, political subdivision, governmental unit, department or agency and

47 shall include a notification center and any trustee, receiver, assignee or personal representative  
48 thereof;

49 (7) "Pipeline facility" includes, without limitation, new and existing pipe, rights-of-way,  
50 and any equipment, facility, or building used or intended for use in the transportation of gas or  
51 the treatment of gas, or used or intended for use in the transportation of hazardous liquids  
52 including petroleum, or petroleum products;

53 (8) "Preengineered project", a project which is approved by an agency or political  
54 subdivision of the state and for which the agency or political subdivision responsible for the  
55 project, as part of its engineering and contract procedures, holds a meeting prior to the  
56 commencement of any construction work on such project and in such meeting all persons  
57 determined by the agency or political subdivision to have underground facilities located within  
58 the excavation area of the project are invited to attend and given an opportunity to verify or  
59 inform any agency or political subdivision of the location of their underground facilities, if any,  
60 within the excavation area and where the location of all known underground facilities are duly  
61 located or noted on the engineering drawing as specifications for the project;

62 (9) "Underground facility", any item of personal property which shall be buried or placed  
63 below ground for use in connection with the storage or conveyance of water, storm drainage,  
64 sewage, electronic, telephonic, or telegraphic data communications, cable television, electric  
65 energy, oil, gas, hazardous liquids or other substances, and shall include but not be limited to  
66 pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those portions  
67 of pylons or other supports below ground that are within any public or private street, road or  
68 alley, right-of-way dedicated to the public use or utility easement of record, or prescriptive  
69 easement, except that gas distribution lines or electric, telephone, television cable, water, storm  
70 drainage or sewer lines **located on and** owned solely by the owner or owners of the real property  
71 to which such lines provide service shall not be considered underground facilities for purposes  
72 of this chapter;

73 (10) "Working day", every day, except Saturday, Sunday or a legally declared local, state  
74 or federal holiday.

319.022. 1. Owners and operators of underground pipeline facilities in compliance with  
2 federal law shall, and owners and operators of other underground facilities may, participate in  
3 a notification center. **The provisions of this subsection shall expire on December 31, 2002.**

4 2. [A] **All owners and operators of underground facilities located within the state**  
5 **who are not members of a notification center on August 28, 2001, shall become participants**  
6 **in the notification center prior to January 1, 2003. Any person who installs or otherwise**  
7 **becomes an owner or operator of an underground facility on or after January 1, 2003, shall**  
8 **become a participant in the notification center within thirty days of acquiring or operating**

9 **such underground facility. Beginning January 1, 2003, all owners and operators of**  
10 **underground facilities located in the state shall maintain participation in the notification**  
11 **center.**

12 **3. The notification center shall [file with the recorder of deeds, in every county wherein**  
13 **any of the owners and operators which it represents have underground facilities, the name,**  
14 **address and telephone number of the notification center to which telephonic or written inquiries**  
15 **concerning the location of underground facilities may be addressed and a] maintain in its offices**  
16 **and make available to any person upon request a current list of the names and addresses of**  
17 **each owner and operator [which the organization represents.] participating in the notification**  
18 **center, including the county or counties wherein each owner or operator has underground**  
19 **facilities. The notification center may charge a reasonable fee to persons requesting such**  
20 **list as is necessary to recover the actual costs of printing and mailing.**

21 **4. Excavators shall be informed of the availability of the list of participants in the**  
22 **notification center required in subsection 3 of this section in the manner provided for in**  
23 **section 319.024.**

319.023. 1. Except for owners and operators who are participants in a notification center  
2 which [has filed a statement with the recorder of deeds] **maintains and makes available a**  
3 **current list of participants**, pursuant to section 319.022, all **owners and** operators having  
4 underground facilities within a county shall file with the recorder of deeds in any such county  
5 a notice that such **owner or** operator has underground facilities located within the county and  
6 the address and the telephone number of the person or persons from whom information about  
7 the location of such underground facilities may be obtained.

8 2. The recorder of deeds shall maintain a current list of all owners and operators who  
9 have filed statements [individually and through notification centers] pursuant to this chapter and  
10 shall make copies of such list available to any person upon request.

319.024. 1. Every person owning or operating an underground facility shall assist  
2 excavators and the general public in determining the location of underground facilities before  
3 excavation activities are begun **or as may be required by subsection 6 of section 319.026 or**  
4 **subsection 1 of section 319.030 after an excavation has commenced.** Methods of informing  
5 the public and excavators of the means of obtaining such information may, but need not, include  
6 advertising, including advertising in periodicals of general circulation or trade publications,  
7 information provided to professional or trade associations which routinely provide information  
8 to excavators or design professionals, or sponsoring meetings of excavators and design  
9 professionals for such purposes. [Owners and operators who are participants in a notification  
10 center may meet the requirements of this section through the notification center.] **Information**  
11 **provided by the notification center on behalf of persons owning or operating an**

12 **underground facility shall be deemed in compliance with this section by such persons.**

13 Every person owning or operating underground facilities who has a written policy in determining  
14 the location of its underground facilities shall make available a copy of said policy to any person  
15 upon request.

16 2. Every person owning or operating underground pipeline facilities shall, in addition  
17 to the requirements of subsection 1 of this section:

18 (1) Identify on a current basis, persons who normally engage in excavation activities in  
19 the area in which the pipeline is located. Every such person who is a participant in a notification  
20 center shall be deemed to comply with this subdivision if such notification center maintains and  
21 updates a list of the names and addresses of all excavators who have given notice of intent to  
22 excavate to such notification center during the previous five years and provided the notification  
23 center shall, not less frequently than annually, provide public notification and actual notification  
24 to all excavators on such list of the existence and purpose of the notification center, and  
25 procedures for obtaining information from the notification center;

26 (2) Either directly or through the notification center, notify excavators and the public in  
27 the vicinity of his **or her** underground pipeline facility of the availability of the notification  
28 center by including the information set out in subsection 1 of section 319.025, in notifications  
29 required by the safety rules of the Missouri public service commission relating to its damage  
30 prevention program;

31 (3) Notify excavators annually who give notice of their intent to excavate directly or  
32 through **the notification center prior to January 1, 2003, and excavators who give notice**  
33 **exclusively through** a notification center **after January 1, 2003**, of the type of [temporary]  
34 marking to be provided and how to identify the markings.

319.025. 1. Except as provided in [sections 319.030 and] **subsection 4 of this section**  
2 **or in section 319.030 or** 319.050, a person shall not make or begin any excavation in any public  
3 street, road or alley, right-of-way dedicated to the public use or utility easement of record or  
4 within any private street or private property without first[, when necessary to determine  
5 proximity to underground facilities,] giving notice to and obtaining information concerning the  
6 possible location of any underground facilities which may be affected by said excavation from  
7 each and every owner and operator of underground facilities whose name appears on the current  
8 list of [the recorder of deeds in and for the county in which the excavation is to be made]  
9 **participants in the notification center. Prior to January 1, 2003, a person shall not make**  
10 **or begin any excavation pursuant to this subsection without also making notice to owners**  
11 **or operators of underground facilities which do not participate in a notification center and**  
12 **whose name appears on the current list of the recorder of deeds in and for the county in**  
13 **which the excavation is to occur. Beginning January 1, 2002, notice to the notification**

14 **center of proposed excavation shall be deemed notice to all owners and operators of**  
15 **underground facilities.** The notice referred to herein shall comply with the provisions of  
16 section 319.026.

17 2. [An excavator's notice to a notification center shall be deemed notice to all owners and  
18 operators of underground facilities represented by such notification center.] An excavator's  
19 notice to owners and operators of underground facilities [who are represented by a notification  
20 center according to the current list of the recorder of deeds] **participating in the notification**  
21 **center pursuant to section 319.022** is ineffective for purposes of subsection 1 of this section  
22 unless given to such notification center. **Prior to January 1, 2003,** the notice required by  
23 subsection 1 of this section shall be given directly to owners or operators of underground  
24 facilities who are not represented by a notification center.

25 3. If the excavator is engaged in trenching, ditching, drilling, well-drilling or -driving,  
26 **augering or boring** and, if upon notification by the excavator [as provided under] **pursuant to**  
27 section 319.026, the owner or operator notifies the excavator that the area of excavation cannot  
28 be determined from the description provided by the excavator, the excavator shall mark the  
29 proposed area of excavation prior to marking of location by the owner or operator of the facility.  
30 **For any excavation, as defined in section 319.015, if the owner or operator notifies the**  
31 **excavator that the area of excavation cannot be determined from the description provided**  
32 **by the excavator through the notice required by this section, the owner or operator may**  
33 **require the excavator to provide project plans to the owner or operator, or meet on the site**  
34 **of the excavation with representatives of the owner or operator as provided by subsection**  
35 **1 of section 319.030. The provisions of this subsection shall not apply to owners of**  
36 **residential property performing excavations on their own property.**

319.026. 1. An excavator shall serve notice of intent to excavate to the notification  
2 center by toll-free telephone number operated on a twenty-four hour per day, seven day per week  
3 basis or, **prior to January 1, 2003,** to individual nonparticipant owners or operators at least two  
4 [full] working days, but not more than ten working days, before commencing the excavation  
5 activity. The notification center receiving such notice shall inform the excavator of all owners,  
6 operators and other persons to whom such notice will be transmitted and shall promptly transmit  
7 such notice to every public utility, municipal corporation and all persons owning or operating  
8 an underground facility in the area of excavation and which are participants in and have  
9 registered their locations with the notification center. **The notification center receiving such**  
10 **notice shall solicit all information required in subsection 2 of this section from the**  
11 **excavator and shall transmit all details of such notice as required by this section.**

12 2. Each notice of intent to excavate given [hereunder] **pursuant to this section** shall  
13 contain the name, address and telephone number **and facsimile number, if any,** of the person

14 filing the notice of intent, the name, address and telephone number of the excavator, the date the  
15 excavation activity is to commence, the depth of planned excavation and, if applicable, that the  
16 use of explosives is anticipated on the excavation site, and the type of excavation being planned,  
17 including whether the excavation involves tunneling or horizontal boring. **The notice shall state**  
18 **whether someone is available between 8:00 a.m. and 5:00 p.m. on working days at the**  
19 **telephone number given and whether the excavator's telephone is equipped with a**  
20 **recording device.** The notice shall also specify the location of the excavation by any one or  
21 more of the following means: by reference to a specific street address, [or by reference to platted  
22 lot number of record,] or by reference to specific quarter section, and shall state whether  
23 excavation is to take place within the city limits. **The notice shall also include a description**  
24 **of the location or locations of the excavation at the site described by direction and**  
25 **approximate distance in relation to prominent features of the site, such as existing**  
26 **buildings or roadways. For excavations occurring outside the limits of an incorporated**  
27 **city, the following additional information shall be provided: the location of the excavation**  
28 **in relation to the nearest numbered, lettered or named state or county road which is posted**  
29 **on a road sign, including the approximate distance from the nearest intersection or**  
30 **prominent landmark; and, if the excavation is not on or near a posted numbered, lettered**  
31 **or named state or county road, directions as to how to reach the site of the excavation from**  
32 **the nearest such road. The notification center receiving such notice shall solicit all**  
33 **information required in this subsection and shall require the excavator to provide all such**  
34 **information before notice by the excavator is deemed to be completed pursuant to sections**  
35 **319.015 to 319.050. The notification center shall transmit all details of such notice as**  
36 **required in subsection 1 of this section.**

37         3. A written record of each notice of intent to excavate shall be maintained by the  
38 notification center or, **prior to January 1, 2003, by the** nonmember owner or operator receiving  
39 direct notifications for a period of five years. The record shall include the date the notice was  
40 received and all information required by subsection 2 of this section which was provided by the  
41 excavator. If the recipient creates a record of the notice by computer or telephonic recording,  
42 such record of the original notice shall be maintained for one year from the date of receipt.  
43 Persons holding records of notices of intent to excavate and records of information provided to  
44 the excavator by the notification center or owner or operator of the facility, shall make copies of  
45 such records available for a reasonable copying fee upon the request of the owner or operator of  
46 the underground facilities or the excavator filing the notice.

47         4. If in the course of excavation the person responsible for the excavation operations  
48 discovers that the owner or operator of the underground facility **who is a participant in a**  
49 **notification center** has incorrectly located the underground facility, he **or she** shall notify the

50 **notification center which shall inform the participating owner or operator. If the owner or**  
51 **operator of the underground facility is not a participant in a notification center prior to**  
52 **the January 1, 2003, effective date for mandatory participation pursuant to section**  
53 **319.022, the person responsible for the excavation shall notify the owner.** The person  
54 responsible for maintaining records of the location of underground facilities for the owner or  
55 operator shall correct such records to show the actual location of such facilities, if current records  
56 are incorrect.

57       5. Notwithstanding the fact that a project is a preengineered project or a permitted  
58 project, excavators connected therewith shall be required to give notification in accordance with  
59 this section prior to commencement of [construction or excavation, whichever event first occurs]  
60 **excavation.**

61       **6. When markings have been provided in response to a notice of intent to excavate,**  
62 **excavators may continue to work within the area described in the notice so long as the**  
63 **markings are visible. If markings become unusable due to weather, construction or other**  
64 **cause, the excavator shall contact the notification center to request remarking. Such notice**  
65 **shall be given in the same manner as original notice of intent to excavate, and the owner**  
66 **or operator shall remark the site in the same manner, within the same time, as required in**  
67 **response to an original notice of intent to excavate. Each excavator shall exercise**  
68 **reasonable care not to unnecessarily disturb or obliterate markings provided for location**  
69 **of underground facilities. If remarking is required due to the excavator's failure to**  
70 **exercise reasonable care, or if repeated unnecessary requests for remarking are made by**  
71 **an excavator even though the markings are visible and usable, the excavator may be liable**  
72 **to the owner or operator for the reasonable cost of such remarking.**

      319.030. 1. Every person owning or operating an underground facility to whom notice  
2 of intent to excavate is required to be given [hereunder through a notification center or directly]  
3 shall, upon receipt of such notice as provided [herein] **in this section** from a person intending  
4 to commence an excavation, inform the excavator as promptly as practical, but not in excess of  
5 two working days from receipt of the notice, unless otherwise mutually agreed, of the  
6 approximate location of underground facilities in or near the area of the excavation so as to  
7 enable the person engaged in the excavation work to locate the facilities in advance of and during  
8 the excavation work. **If the information available to the owner or operator of a pipeline**  
9 **facility or an underground electric or communications cable discloses that valves, vaults**  
10 **or other appurtenances are located in or near the area of excavation, the owner or operator**  
11 **shall either inform the excavator of the approximate location of such appurtenances at the**  
12 **same time and in the same manner as the approximate location of the remainder of the**  
13 **facility is provided, or shall at such time inform the excavator that appurtenances exist in**



14 **the area and provide a telephone number through which the excavator may contact a**  
15 **representative of the owner or operator who will meet at the site within one working day**  
16 **after request from the excavator and at such meeting furnish the excavator with the**  
17 **available information about the location and nature of such appurtenances.** If the excavator  
18 states in the notice of intent to excavate that the excavation will involve tunneling or horizontal  
19 boring, the owner or operator shall inform the excavator of the depth, to the best of his **or her**  
20 knowledge or ability, of the facility according to the records of the owner or operator. The owner  
21 or operator shall provide the approximate location of underground facilities by use of [marking  
22 or any other usual and customary means of providing the approximate location. Upon agreement  
23 of the excavator and the owner or operator of the underground facility, location may be provided  
24 by an alternative means such as an on-site meeting or other conference between representatives  
25 of the excavator and the owner or operator. If the owner or operator determines that marking is  
26 not feasible due to terrain or other physical conditions at the site, he shall notify the excavator  
27 that marking cannot be used and advise the excavator of another means of location which will  
28 be used. If location is not marked, the excavator may request additional information in locating  
29 the facility if needed to avoid damage to the facility and the same shall be provided by the owner  
30 or operator within twenty-four hours of such request] **markings.** If stakes are used, staking shall  
31 be consistent with the color code and other standards for ground markings. Persons representing  
32 the excavator and the owner or operator shall meet on the site of excavation within [forty-eight  
33 hours] **two working days** of a request by either person for such meeting for the purpose of  
34 clarifying [ground] markings, or upon agreement of the excavator and owner or operator, such  
35 meeting may be an alternate means of providing the location of facilities **by originally marking**  
36 **the approximate location of the facility at the time of the meeting.** If upon receipt of a notice  
37 of intent to excavate, an owner or operator determines that [no] **he or she neither owns or**  
38 **operates** underground facilities [are located] in or near the area of excavation, the owner or  
39 operator shall within two working days after receipt of the notice, inform the excavator that **the**  
40 **owner or operator has** no facilities [are] located in the area **of the proposed excavation. If**  
41 **the notice of intent to excavate provided to the owner or operator of the underground**  
42 **facility by the notification center states that a person is available at the telephone number**  
43 **given in the notice between 8:00 a.m. and 5:00 p.m. on each working day or that the**  
44 **excavator's telephone is equipped with a recording device, or states a facsimile number for**  
45 **the excavator, the owner or operator shall make actual notice of no facilities in the area of**  
46 **the excavation described in the notice by one or more of the following methods: calling the**  
47 **telephone number given between 8:00 a.m. and 5:00 p.m. on a working day; leaving a**  
48 **message on the excavator's recording device; transmitting a facsimile message to the**  
49 **excavator; marking "no facilities" or "clear" at the site of excavation; or verbally**

50 **informing the excavator at the site of excavation. If the notice of intent to excavate**  
51 **provided to the owner or operator does not indicate the methods indicated above, the**  
52 **owner or operator may attempt to notify the excavator of no facilities in the area of**  
53 **excavation by any of the methods indicated above; however, two documented attempts by**  
54 **the owner or operator to reach such an excavator by telephone shall constitute compliance**  
55 **with this subsection.** A record of the date and means of informing the excavator that no  
56 facilities were located by the owner or operator, shall be included in the written records required  
57 by subsection 3 of section 319.026.

58         2. Owners and operators of underground facilities who are [represented by a]  
59 **participants in the** notification center according to the current list [of the recorder of deeds]  
60 **maintained in the offices of the notification center** shall be relieved of the responsibility to  
61 respond to notices of intent to excavate received directly from the person intending to commence  
62 an excavation, except for requests for clarification of [ground] markings through on-site  
63 meetings and requests for locations at the time of an emergency as provided by section 319.050.

64         3. In the event that a person owning or operating an underground facility fails to comply  
65 with the provisions of subsection 1 of this section after notice given by an excavator in  
66 compliance with section 319.026, the excavator, prior to commencing the excavation, shall  
67 [directly contact the appropriate owners or operators of underground facilities to obtain location  
68 information or special instructions for proceeding with the excavation at that location] **give a**  
69 **second notice to the same entity to whom the original notice was made as required by**  
70 **section 319.026.** If, after the receipt of the [direct contact by the excavator] **second notice**, the  
71 owner or operator of an underground facility fails to provide the excavator with location  
72 information [or special instructions] during the next working day, the excavator may commence  
73 the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree  
74 of care in making the excavation as is otherwise required by law.

75         4. **For purposes of this section, a period of two working days begins upon receipt**  
76 **of the excavator's notice of intent to excavate or upon receipt of a request for a meeting and**  
77 **shall end on the second working day thereafter at the same time of day. If the excavator's**  
78 **notice of intent to excavate or a request for a meeting is received on a working day before**  
79 **8:00 a.m., such period of time shall begin at 8:00 a.m. of that day. If the excavator's notice**  
80 **of intent to excavate or a request for a meeting is received after 5:00 p.m. on any day, such**  
81 **period of time shall begin at 8:00 a.m. of the first working day after the day of actual**  
82 **receipt.**

319.037. 1. Notwithstanding any other provision of law to the contrary, the  
2 procedures and requirements set forth in this section shall apply on the site of any  
3 excavation involving horizontal boring, including directional drilling, where the

4 approximate location of underground facilities has been marked in compliance with section  
5 319.030 and where any part of the walls of the intended bore are within the marked  
6 approximate location of the underground facility.

7       2. The excavator shall not use power-driven equipment for horizontal boring,  
8 including directional drilling, within the marked approximate location of such  
9 underground facilities until the excavator has made careful and prudent efforts to confirm  
10 the horizontal and vertical location thereof in the vicinity of the proposed excavation  
11 through methods appropriate to the geological and climatological conditions, and the  
12 nature of the facility, such as the use of electronic locating devices, hand digging, pot holing  
13 when practical, soft digging, vacuum methods, use of pressurized air or water, pneumatic  
14 hand tools or other noninvasive methods as such methods are developed. Such methods  
15 of confirming location shall not violate established safety practices. Nothing in this  
16 subsection shall authorize any person other than the owner or operator of a facility to  
17 attach an electronic locating device to any underground facility. For excavations  
18 paralleling the underground facility, such efforts to confirm the location of the facility shall  
19 be made at careful and prudent intervals. The excavator shall also make careful and  
20 prudent efforts by such means as are appropriate to the geological and climatological  
21 conditions and the nature of the facility, to confirm the horizontal and vertical location of  
22 the boring device during boring operations. Notwithstanding the foregoing, the excavator  
23 shall not be required to confirm the horizontal or vertical location of the underground  
24 facilities if the excavator, using the methods described in this section, excavates a hole over  
25 the underground facilities to a depth two feet or more below the planned boring path and  
26 then carefully and prudently monitors the horizontal and vertical location of the boring  
27 device in a manner calculated to enable the device to be visually observed by the excavator  
28 as it crosses the entire width of the marked approximate location of the underground  
29 facilities.

      319.041. No owner or operator of an underground facility who fails to participate  
2 in the notification center after January 1, 2003, shall be allowed to recover damages  
3 resulting from any excavation for which notice of intent to excavate was made pursuant  
4 to section 319.026.

      319.045. 1. In the event of any damage or dislocation or disturbance of any underground  
2 facility in connection with any excavation, the person responsible for the excavation operations  
3 shall immediately notify the notification center and the owner or operator of the facility or the  
4 owner or operator, **if known**, if it is not a participant in the notification center **prior to January**  
5 **1, 2003. On or after January 1, 2003, the responsible party shall notify the notification**  
6 **center only.**

7           2. In the event of any damage or dislocation or disturbance to any underground facility  
8 in advance of or during the excavation work, the person responsible for the excavation operations  
9 shall not conceal or attempt to conceal such damage or dislocation or disturbance, nor shall that  
10 person attempt or make repairs to the facility unless authorized by the owner or operator of the  
11 facility. In the case of sewer lines or facilities, emergency temporary repairs may be made by the  
12 excavator after notification without the owners' or operators' authorization to prevent further  
13 damage to the facilities. Such emergency repairs shall not relieve the excavator of responsibility  
14 to make notification as required by subsection 1 of this section.

15           3. Any person who violates in any material respect the provisions of section 319.022,  
16 319.023, 319.025, 319.026, 319.030, **310.037** or 319.045 [of this chapter] or who willfully  
17 damages an underground facility shall be liable to the state of Missouri for a civil penalty of up  
18 to ten thousand dollars for each violation for each day such violation persists, except that the  
19 maximum penalty for violation of the provisions of sections 319.010 to 319.050 shall not exceed  
20 five hundred thousand dollars for any related series of violations. An action to recover such civil  
21 penalty may be brought by the attorney general or a prosecuting attorney on behalf of the state  
22 of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court,  
23 which shall consider the nature, circumstances and gravity of the violation, and with respect to  
24 the person found to have committed the violation, the degree of culpability, the absence or  
25 existence of prior violations, whether the violation was a willful act, the effect on ability to  
26 continue to do business, any good faith in attempting to achieve compliance, ability to pay the  
27 penalty, and such other matters as justice may require in determining the amount of penalty  
28 imposed.

29           4. The attorney general may bring an action in any appropriate circuit court of this state  
30 for equitable relief to redress or restrain a violation by any person of any provision of sections  
31 319.010 to 319.050. The court may grant such relief as is necessary or appropriate, including  
32 mandatory or prohibitive injunctive relief, temporary or permanent.

          319.050. The provisions of sections 319.025 and 319.026 shall not apply when making  
2 an excavation at times of emergency [involving danger to life, health or property,] **resulting**  
3 **from a sudden, unexpected occurrence, and presenting a clear and imminent danger**  
4 **demanding immediate action to prevent or mitigate loss or damage to life, health, property**  
5 **or essential public services. "Unexpected occurrence" includes, but is not limited to, fires,**  
6 **floods, earthquakes, or other soil or geologic movements, riots, accidents, vandalism or**  
7 **sabotage which cause damage to subsurface facilities requiring immediate repair. An**  
8 **excavator may proceed regarding such emergency,** provided all reasonable precautions have  
9 been taken to protect the underground facilities. In any such case, the excavator shall give  
10 notification, substantially in compliance with section 319.026, as soon as practical, and upon

11 being notified that an emergency exists, each owner and operator of an underground facility in  
12 the area shall immediately provide all location information reasonably available to any excavator  
13 who requests the same.