

FIRST REGULAR SESSION

HOUSE BILL NO. 924

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ST. ONGE (Sponsor), MCGHEE, THRELKELD, FAITH,
LOEHNER, DEEKEN, KUESSNER, COOPER (120), FLOOK AND MEADOWS (Co-sponsors).

Read 1st time February 20, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1767L.02I

AN ACT

To amend chapter 319, RSMo, by adding thereto one new section relating to damage to underground facilities.

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

Section A. Chapter 319, RSMo, is amended by adding thereto one new section, to be
2 known as section 319.055, to read as follows:

319.055. 1. As used in this section, the following words shall mean:

2 **(1) "Action", any legal proceeding filed in a court of competent jurisdiction under**
3 **section 516.120, RSMo;**

4 **(2) "Claim", an invoice or other written statement delivered to an excavator by an**
5 **underground facility owner stating a demand for payment for costs of repair or other**
6 **damages alleged by an underground facility owner to have resulted from an excavation**
7 **conducted by the excavator;**

8 **(3) "Excavation", any operation in which earth, rock or other material in or on the**
9 **ground is moved, removed or otherwise displaced by means of any tools, equipment or**
10 **explosives and includes, without limitation, backfilling, grading, trenching, digging,**
11 **ditching, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe**
12 **plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that,**
13 **the use of mechanized tools and equipment to break and remove pavement and masonry**
14 **down only to the depth of such pavement or masonry, the use of high-velocity air to**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 disintegrate and suction to remove earth, rock and other materials, and the tilling of soil
16 for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving
17 earth on the ground in connection with other excavation operations at the same site shall
18 not be deemed separate instances of excavation;

19 (4) "Underground facility", any item of personal property which shall be buried
20 or placed below ground for use in connection with the storage or conveyance of water,
21 storm drainage, sewage, telecommunications service, cable television service, electricity,
22 oil, gas, hazardous liquids or other substances, and shall include but not be limited to
23 pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those
24 portions of pylons or other supports below ground that are within any public or private
25 street, road or alley, right-of-way dedicated to the public use or utility easement of record,
26 or prescriptive easement; except that where gas distribution lines or electric lines,
27 telecommunications facilities, cable television facilities, water service lines, water system,
28 storm drainage or sewer system lines are and such lines or facilities are owned solely by the
29 owner or owners of such property, such lines or facilities receiving service shall not be
30 considered underground facilities for purposes of this chapter; provided, however, for
31 railroads regulated by the Federal Railroad Administration, "underground facility" as
32 used in sections 319.015 to 319.050 shall not include any excavating done by a railroad
33 when such excavating is done entirely on land which the railroad owns or on which the
34 railroad operates, or in the event of emergency, on adjacent land.

35 2. Notwithstanding any other provision of law to the contrary, any claim for
36 damage to an underground facility allegedly caused by excavation that is brought by an
37 underground facility owner against an excavator shall be delivered to the excavator within
38 ninety days of completion of repairs to the facility and shall in no case be made more than
39 one hundred eighty days after the date the person responsible for the excavation notified
40 the notification center of damage under section 319.045. Any claim not made within the
41 time periods prescribed by this section, or within such other time period as may be agreed
42 upon in writing by the owner and excavator after the occurrence of the damage, shall be
43 barred. If no notice of damage was made by the excavator under section 319.045, or the
44 excavator concealed or attempted to conceal damage to the facility, or made unauthorized
45 repairs to the damaged facility in violation of section 319.045, the limitation of this section
46 shall not apply. If repairs cannot be made within ninety days after the notice of damage
47 by the excavator due to an order or notice of investigation by the Missouri public service
48 commission, the federal Office of Pipeline Safety, or by order of a state or federal court,
49 and if the owner has delivered to the excavator a copy of the order or notice of

50 investigation within such ninety-day period, then the period within which a claim may be
51 delivered to the excavator shall end ninety days after completion of repairs.

52 **3. If an underground facility owner elects to make temporary repairs to facilities**
53 **allegedly damaged by excavation, the provisions of subsection 1 of this section shall apply**
54 **separately to a claim for the cost of the temporary repairs and to a claim for the cost of**
55 **subsequent permanent repairs. The claim for permanent repairs in such case shall not be**
56 **barred after the one hundred eighty-day period specified in subsection 1 of this section if**
57 **the claim for temporary repairs was made in compliance with subsection 1 of this section,**
58 **and the underground facility owner proceeded with reasonable diligence to make**
59 **permanent repairs, and the claim for permanent repairs was made in writing and delivered**
60 **to the excavator within ninety days after completion of the permanent repairs.**

61 **4. Any claim delivered to an excavator under subsection 1 or subsection 2 of this**
62 **section shall be paid by the excavator within ninety days after receipt of the claim, or if the**
63 **claim is disputed by the excavator, in whole or in part, a written statement stating the**
64 **reason or reasons for disputing the claim shall be delivered by the excavator to the**
65 **underground facility owner making the claim within ninety days after receipt of the claim.**
66 **If such written statement disputing the claim has not been delivered to the underground**
67 **facility owner within ninety days after receipt of the claim, in any subsequent action for**
68 **collection of the claim, there shall be a rebuttable presumption that the amount claimed**
69 **is due and owing from the excavator.**

70 **5. Any action, as defined in this section, shall be barred unless a claim has been**
71 **made, as provided by this section.**

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