

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1867

97TH GENERAL ASSEMBLY

5229H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 319.028, 319.029, 319.030, 319.035, 319.040, 319.041, 319.045, and 319.050, RSMo, and to enact in lieu thereof thirteen new sections relating to underground facility safety, with an effective date.

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

Section A. Sections 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 2 319.028, 319.029, 319.030, 319.035, 319.040, 319.041, 319.045, and 319.050, RSMo, are 3 repealed and thirteen new sections enacted in lieu thereof, to be known as sections 319.015, 4 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, 319.033, 319.035, 319.045, 5 319.046, 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) "Design request", a request from any person for facility location information for
8 design purposes only;
- 9 (3) "Emergency", [either:
- 10 (a)] a sudden, unexpected occurrence, presenting a clear and imminent danger demanding
11 immediate action to prevent or mitigate loss or damage to life, health, property, or essential
12 public services. "Unexpected occurrence" includes, but is not limited to, thunderstorms, high

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.

13 winds, ice or snow storms, fires, floods, earthquakes, or other soil or geologic movements, riots,
14 accidents, water or wastewater pipe breaks, vandalism, or sabotage[; or

15 (b) Any interruption in the generation, transmission, or distribution of electricity, or any
16 damage to property or facilities that causes or could cause such an interruption];

17 (4) "Excavation", any operation in which earth, rock or other material in or on the ground
18 is moved, removed or otherwise displaced by means of any tools, equipment or explosives and
19 includes, without limitation, backfilling, grading, trenching, digging, ditching, **pulling material**
20 **from a ditch but not including routine road maintenance**, drilling, well-drilling, augering,
21 boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and
22 demolition of structures, except that, the use of mechanized tools and equipment to break and
23 remove pavement and masonry down only to the depth of such pavement or masonry **on roads**
24 **dedicated to the public use for vehicular traffic**, [the use of pressurized air to disintegrate and
25 suction to remove earth, rock and other materials,] the tilling of soil for agricultural [or seeding]
26 purposes **when such excavation does not exceed fifteen inches in depth**, [and] the installation
27 of marking flags and stakes **and the use of pressurized air to disintegrate and suction to**
28 **remove earth, rock, or other materials** for the location of underground facilities [that are not
29 driven] shall not be deemed excavation. Backfilling or moving earth on the ground in
30 connection with other excavation operations at the same site shall not be deemed separate
31 instances of excavation. **For railroads regulated by the Federal Railroad Administration,**
32 **"excavation" shall not include any excavating done by a railroad when such excavating is**
33 **done entirely on land that the railroad owns or on which the railroad operates, or in the**
34 **event of an emergency, excavating done by a railroad on adjacent land;**

35 (5) "Excavator", any person making one or more excavations who is required to make
36 notices of excavation under the requirements of sections 319.010 to 319.050;

37 (6) **"Locate status", the underground facility owner's designation of the status of**
38 **the locate request to the notification center which then makes that information available**
39 **to the person making the locate request through electronic or other means;**

40 (7) "Marking", the use of paint, flags, stakes, or other clearly identifiable materials to
41 show the field location of underground facilities, or the area of proposed excavation, in
42 accordance with [the color code standard of the American Public Works Association. Unless
43 otherwise provided by the American Public Works Association, the following color scheme shall
44 be used: blue for potable water; purple for reclaimed water, irrigation and slurry lines; green for
45 sewers and drain lines; red for electric, power lines, cables, conduit and lighting cables; orange
46 for communications, including telephone, cable television, alarm or signal lines, cable or
47 conduit; yellow for gas, oil, steam, petroleum or gaseous materials; white for proposed
48 excavation; pink for temporary marking of construction project site features such as centerline

49 and top of slope and toe of slope] **the marking standards for underground facilities as**
50 **designated by the Common Ground Alliance Best Practices Version 10.0 except that**
51 **“approximate location” shall comply with the requirements as set forth in subdivision (1)**
52 **of this section;**

53 [(7)] (8) "Notification center", a statewide organization operating twenty-four hours a
54 day, three hundred sixty-five days a year on a not-for-profit basis, supported by [its participants,
55 or by more than one operator of underground facilities, having as its principal purpose the
56 statewide receipt and dissemination to participating owners and operators of underground
57 facilities of information concerning intended excavation activities in the area where such owners
58 and operators have underground facilities, and open to participation by any and all such owners
59 and operators on a fair and uniform basis. Such notification center shall be governed by a board
60 of directors elected by the membership and composed of representatives from each general
61 membership group, provided that one of the board members shall be a representative of the state
62 highways and transportation commission so long as the commission is a participant in the
63 notification center] **a majority of the underground facility owners in the state of Missouri;**

64 [(8)] (9) "Notification center participant", an underground facility owner who is a
65 member and participant in the notification center;

66 [(9)] (10) "Permitted project", a project for which a permit for the work to be performed
67 is required to be issued by a local, state or federal agency and, as a prerequisite to receiving such
68 permit, the applicant is required to notify all underground facility owners in the area of the work
69 for purposes of identifying the location of existing underground facilities;

70 [(10)] (11) "Person", any individual, firm, joint venture, partnership, corporation,
71 association, cooperative, municipality, political subdivision, governmental unit, department or
72 agency and shall include a notification center and any trustee, receiver, assignee or personal
73 representative thereof;

74 [(11)] (12) "Pipeline facility" includes[, without limitation, new and existing pipe,
75 rights-of-way, and any equipment, facility, or building used or intended for use in the
76 transportation of gas or the treatment of gas, or used or intended for use in the transportation of
77 hazardous liquids including petroleum, or petroleum products] **all parts of a facility through**
78 **which a hazardous liquid or gas moves in transportation including, but not limited to, pipe,**
79 **valves and other appurtenances connected to pipe, pumping units, fabricated assemblies**
80 **associated with pumping units, metering and delivery stations and fabricated assemblies**
81 **therein, and breakout tanks;**

82 [(12)] "Preengineered project", a project which is approved by an agency or political
83 subdivision of the state and for which the agency or political subdivision responsible for the
84 project, as part of its engineering and contract procedures, holds a meeting prior to the

85 commencement of any construction work on such project and in such meeting all persons
86 determined by the agency or political subdivision to have underground facilities located within
87 the excavation area of the project are invited to attend and given an opportunity to verify or
88 inform any agency or political subdivision of the location of their underground facilities, if any,
89 within the excavation area and where the location of all known underground facilities are duly
90 located or noted on the engineering drawing as specifications for the project;]

91 (13) "State plane coordinates", a system of locating a point on a flat plane developed by
92 the National Oceanic and Atmospheric Administration and utilized by state agencies, local
93 governments, and other persons to designate the site of a construction project;

94 (14) "Trenchless excavation", horizontal excavation parallel to the surface of the earth
95 which does not use trenching or vertical digging as the primary means of excavation, including
96 but not limited to directional boring, tunneling, or augering;

97 (15) "Underground facility", any item of personal property which shall be buried or
98 placed below ground for use in connection with the storage or conveyance of water, storm
99 drainage, sewage, telecommunications service, cable television service, electricity, oil, gas,
100 hazardous liquids or other substances, and shall include but not be limited to pipes, sewers,
101 conduits, cables, valves, **vaults**, lines, wires, manholes, attachments, or appurtenances, and those
102 portions of pylons or other supports below ground that are within any public or private street,
103 road or alley, right-of-way dedicated to the public use or utility easement of record, or
104 prescriptive easement. If gas distribution lines or electric lines, telecommunications facilities,
105 cable television facilities, water service lines, water system, storm drainage or sewer system
106 lines, other than those used for vehicular traffic control, lighting of streets and highways and
107 communications for emergency response, are located on private property and are owned solely
108 by the owner or owners of such private property, such lines or facilities receiving service shall
109 not be considered underground facilities for purposes of this chapter, except at locations where
110 they cross or lie within an easement or right-of-way dedicated to public use or owned by a person
111 other than the owner of the private property. Water and sanitary sewer lines providing service
112 to private property that are owned solely by the owner of such property shall not be considered
113 underground facilities at any location. **A structure that transports storm water drainage**
114 **under roadways, driveways, or railways shall not be considered an underground facility.**
115 [Water, storm drainage, cross road drainage, or sewer lines owned by the state highways and
116 transportation commission shall not be considered underground facilities at any location. For
117 railroads regulated by the Federal Railroad Administration, "underground facility" as used in
118 sections 319.015 to 319.050 shall not include any excavating done by a railroad when such
119 excavating is done entirely on land which the railroad owns or on which the railroad operates,
120 or in the event of emergency, on adjacent land];

121 (16) "Underground facility owner", any person who owns or operates underground
122 facilities [as defined by this section];

123 (17) "Working day", every day, except Saturday, Sunday or a legally declared [local,]
124 state or federal holiday.

319.022. 1. Any person, except a railroad regulated by the Federal Railroad
2 Administration, who installs or otherwise owns or operates an underground facility shall become
3 a participant in a notification center upon first acquiring or owning or operating such
4 underground facility. [Except as provided in section 319.016, all owners and operators of
5 underground facilities within the state shall maintain participation in a notification center.] **All
6 underground facility owners within the state shall maintain participation in a notification
7 center for the duration of owning and operating such underground facility. Such
8 notification center shall be governed by a board of directors elected by the membership
9 and composed of representatives from the general membership group.**

10 2. [All owners and operators of underground facilities which are located in a county of
11 the first classification or second classification within the state who are not members of a
12 notification center on August 28, 2001, shall become participants in the notification center prior
13 to January 1, 2003. Any person who installs or otherwise becomes an owner or operator of an
14 underground facility which is located within a county of the first classification or second
15 classification on or after January 1, 2003, shall become a participant in the notification center
16 within thirty days of acquiring or operating such underground facility. Beginning January 1,
17 2003, all owners and operators of underground facilities which are located in a county of the first
18 classification or second classification within the state shall maintain participation in the
19 notification center except as provided otherwise in section 319.016.

20 3. All owners and operators of underground facilities which are located in a county of
21 the third classification or fourth classification within the state who are not members of a
22 notification center on August 28, 2001, shall become participants in the notification center prior
23 to January 1, 2005. Any person who installs or otherwise becomes an owner or operator of an
24 underground facility which is located within a county of the third classification or fourth
25 classification on or after January 1, 2005, shall become a participant in the notification center
26 within thirty days of acquiring or operating such underground facility. Beginning January 1,
27 2005, all owners and operators of underground facilities which are located in a county of the
28 third classification or fourth classification within the state shall maintain participation in the
29 notification center except as provided otherwise in section 319.016.

30 4.] The notification center shall maintain in its offices and make available to any
31 notification center participant or excavator upon request a current list of the names and addresses
32 of each notification center participant, including the county or counties wherein each participant

33 has underground facilities. The notification center may charge a reasonable fee to notification
34 center participants or excavators requesting such list as is necessary to recover the actual costs
35 of printing and mailing.

36 [5.] 3. Excavators shall be informed of the availability of the list of notification center
37 participants [required in subsection 3 of this section in the manner provided for in section
38 319.024].

39 [6.] 4. An annual audit or review of the notification center shall be performed by a
40 certified public accountant and a report of the findings submitted to the speaker of the house of
41 representatives and the president pro tem of the senate.

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 the
5 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. Information provided by the notification center on behalf of
10 persons owning or operating an underground facility shall be deemed in compliance with this
11 section by such persons. [Every person owning or operating underground facilities who has a
12 written policy in determining the location of its underground facilities shall make available a
13 copy of said policy to any notification center participant or excavator upon request.]

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

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

24 (2) Either directly or through the notification center, notify excavators and the public in
25 the vicinity of his or her underground pipeline facility of the availability of the notification center
26 by including the information set out in subsection 1 of section 319.025 in notifications required

27 by the safety rules of the Missouri public service commission relating to its damage prevention
28 program;

29 (3) Notify excavators annually who give notice of their intent to excavate of the type of
30 marking to be provided and how to identify the markings.

319.025. 1. Except as provided in subsection [3] 4 of section 319.030 and in section
2 319.050, a person shall not make or begin any excavation in any public street, road or alley,
3 right-of-way dedicated to the public use or utility easement of record or within any private street
4 or private property without first giving notice to the notification center and obtaining information
5 concerning the possible location of any underground facilities which may be affected by said
6 excavation from underground facility owners whose names appear on the current list of
7 participants in the notification center and who were communicated to the excavator as
8 notification center participants who would be informed of the excavation notice. [Prior to
9 January 1, 2003, a person shall not make or begin any excavation pursuant to this subsection
10 without also making notice to owners or operators of underground facilities which do not
11 participate in a notification center and whose name appears on the current list of the recorder of
12 deeds in and for the county in which the excavation is to occur. Beginning January 1, 2003,]
13 Notice to the notification center of proposed excavation shall be deemed notice to all owners and
14 operators of underground facilities. The notice referred to in this section shall comply with the
15 provisions of section 319.026.

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

21 3. Notification center participants shall be relieved of the responsibility to respond to a
22 notice of intent to excavate received directly from the person intending to commence an
23 excavation, except for requests for clarification of markings through on-site meetings as provided
24 in subsection 1 of section 319.030 and requests for locations at the time of an emergency as
25 provided by section 319.050.

26 4. [If the owner or operator notifies the excavator that the area of excavation cannot be
27 determined from the description provided by the excavator through the notice required by this
28 section, the excavator shall provide clarification of the area of excavation by markings or by
29 providing project plans to the owner or operator, or by meeting on the site of the excavation with
30 representatives of the owner or operator as provided by subsection 1 of section 319.030.

31 5.] Notwithstanding the provisions of this section to the contrary, a person shall not make
32 or begin any excavation in any state highway, or on the right-of-way of any state highway,

33 without first obtaining a permit from the state highways and transportation commission pursuant
34 to section 227.240, provided however, the provisions of this subsection shall not apply to
35 railroad right-of-way owned or operated by a railroad.

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 by facsimile or by completing notice via the internet at least two working days, but not
4 more than ten working days, before the expected date of commencing the excavation activity.
5 The notification center receiving such notice shall inform the excavator of all notification center
6 participants to whom such notice will be transmitted and shall promptly transmit all details of
7 such notice provided under subsection 2 of this section to every notification center participant
8 in the area of excavation.

9 2. Notices of intent to excavate given pursuant to this section shall contain the following
10 information:

11 (1) The name and telephone number of the person filing the notice of excavation, if the
12 telephone number is different than that of the excavator, and the name, address, telephone
13 number of the excavator and whether the excavator's telephone is equipped with a recording
14 device;

15 (2) The date the excavation activity is expected to commence, the depth of planned
16 excavation and, if applicable, that the use of explosives is anticipated on the excavation site, and
17 the type of excavation being planned, including whether the excavation involves trenchless
18 excavation;

19 (3) The facsimile number, email address, and cellular telephone number of the excavator,
20 if any;

21 (4) The name of the person primarily responsible for conducting the excavation or
22 managing the excavation process, and if any of the information stated in subdivision (1) or (3)
23 of this subsection is different for the person primarily responsible for the excavation, the notice
24 shall also state the same information for that person;

25 (5) A detailed description accepted by the notification center sufficient for the location
26 of the excavation by any one or more of the following means: by reference to a specific street
27 address, or by description of location in relation to the nearest numbered, lettered, or named state
28 or county road or city street for which a road sign is posted, or by latitude and longitude
29 including the appropriate description in degrees, minutes, and seconds, or by state plane
30 coordinates;

31 (6) A description of the site of excavation by approximate distance and direction from
32 the nearest state or county road or city street or intersection of such roads or streets unless

33 previously provided under subdivision (5) of this subsection, and the proximity of the site to any
34 prominent landmarks;

35 (7) A description of the location or locations of the excavation at the site described by
36 direction and approximate distance in relation to prominent features of the site, such as existing
37 buildings or roadways;

38 (8) Directions as to how to reach the site of the excavation from the nearest such road,
39 if the excavation is not on or near a posted numbered, lettered, or named state or county road or
40 city street.

41 3. The notification center receiving such notice shall solicit all information required by
42 subsection 2 of this section and shall require the excavator to provide all such information before
43 notice by the excavator is deemed to be completed pursuant to sections 319.015 to 319.050. The
44 notification center shall transmit all details of such notice as required by this section.

45 4. A record of each notice of intent to excavate shall be maintained by the notification
46 center [or, prior to January 1, 2003, by the nonmember owner or operator receiving direct
47 notifications] for a period of five years. The record shall include the date the notice was received
48 and all information required by subsection 2 of this section which was provided by the excavator
49 and a record of the underground facility owners notified by the notification center. If the
50 notification center creates a record of the notice by telephonic recording, such record of the
51 original notice shall be maintained for one year from the date of receipt. Records of notices to
52 excavate maintained by the notification center in electronic form shall be deemed to be records
53 under this subsection. Persons holding records of notices of intent to excavate and records of
54 information provided to the excavator by the notification center or owner or operator of the
55 facility, shall make copies of such records available for a reasonable copying fee upon the request
56 of the owner or operator of the underground facilities or the excavator filing the notice.

57 5. If in the course of excavation the person responsible for the excavation operations
58 discovers that the owner or operator of the underground facility who is a participant in a
59 notification center has incorrectly located the underground facility, he or she shall notify the
60 notification center which shall inform the [notification center participant. If the owner or
61 operator of the underground facility is not a participant in a notification center prior to the
62 January 1, 2003, effective date for mandatory participation pursuant to section 319.022, the
63 person responsible for the excavation shall notify the owner.] **underground facility owner. The**
64 **underground facility owner shall respond to the incorrect locate notification within two**
65 **hours of receipt of the notification by contacting the person responsible for the excavation**
66 **or by correctly locating their underground facility.** The person responsible for maintaining
67 records of the location of underground facilities for the notification center participant shall
68 correct such records to show the actual location of such facilities, if current records are incorrect.

69 6. When markings have been provided in response to a notice of intent to excavate,
70 excavators may commence or continue to work within the area described in the notice for so long
71 as the markings are visible. **If an excavator is unable to begin the excavation within ten**
72 **working days as described in the request, the excavator shall make a relocate request**
73 **before beginning the excavation.** If markings become unusable due to weather, construction
74 or other cause, the excavator shall contact the notification center to request remarking. Such
75 notice shall be given in the same manner as original notice of intent to excavate, and the owner
76 or operator shall remark the site in the same manner, within the same time, as required in
77 response to an original notice of intent to excavate. Each excavator shall exercise reasonable
78 care not to unnecessarily disturb or obliterate markings provided for location of underground
79 facilities. If remarking is required due to the excavator's failure to exercise reasonable care, or
80 if repeated unnecessary requests for remarking are made by an excavator even though the
81 markings are visible and usable, the excavator may be liable to the owner or operator for the
82 reasonable cost of such remarking. **Nothing in this section shall allow any person other than**
83 **the facility owner or their representative to mark or relocate any underground facility.**

84 7. **Before commencing excavation, the excavator shall determine best practices for**
85 **confirming the horizontal and vertical location of facilities at the site of excavation**
86 **considering conditions at the site including geology, access to the site, and the presence of**
87 **paved surfaces. Hand digging or soft digging shall be used as a best practice when**
88 **possible.**

89 8. **In the event of any damage, dislocation, or disturbance of any underground**
90 **facility in connection with any excavation, the person responsible for the excavation**
91 **operations shall notify the notification center. This subsection shall be deemed to require**
92 **reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode**
93 **protection, permanent above-ground stakes, or other such items utilized for protection of**
94 **the underground facility. The excavator shall immediately contact 911 when any damage**
95 **or contact with a pipeline results in a release from the pipeline of hazardous liquid or gas**
96 **to occur.**

97 9. **In the event of any damage, dislocation, or disturbance to any underground**
98 **facility or any protective devices required to be reported by the excavator under subsection**
99 **8 of this section in advance of or during the excavation work, the person responsible for**
100 **the excavation operations shall not conceal or attempt to conceal such damage, dislocation,**
101 **or disturbance, nor shall that person attempt to make repairs to the facility unless**
102 **authorized by the underground facility owner. In the case of sewer lines or facilities,**
103 **emergency temporary repairs may be made by the excavator after notification without the**
104 **owners' or operators' authorization to prevent further damage to the facilities. Such**

emergency repairs shall not relieve the excavator of responsibility to make notification as required by subsection 8 of this section.

10. No later than April 1, 2015, and each year thereafter, each underground facility owner who owns or operates electric, gas, or pipeline facilities shall submit to a central repository designated by the notification center a report of damages experienced by its facilities for the prior calendar year. The notification center shall determine the minimum information to be reported. All data submitted shall be aggregated and anonymous. Information provided by the underground facility owner specific to damage data submitted shall be accessible only to the underground facility owner unless otherwise designated by the underground facility owner.

319.027. 1. Any person may make design requests by contacting the notification center. Such design requests shall include all information deemed necessary by the notification center to complete the notice, including the identification of the person and a description of the location of the project being designed and other information similar to that required of excavators under section 319.026.

2. Design requests shall be made to the notification center at least five working days, but not more than ten working days, before the date the person has requested receiving the information from the underground facility owner. Upon receipt of a design request, the notification center shall inform the person of the name of all notification center participants to whom the notice will be transmitted and shall promptly transmit such notice to the appropriate underground facility owners.

3. Every underground facility owner who receives a design request shall mark the location of the facility, or contact the person making the request, within five working days after the date the notice was received from the notification center. If the person making the request was contacted as an alternative to marking location, the person and the underground facility owner shall mutually agree on a schedule and method for providing the information, **provided that the facility shall be marked within five working days if the facility owner and the person making the request are unable to agree.**

4. No excavation may be commenced based upon information received through a design request. Obtaining information through a design request shall not excuse any person commencing an excavation from making notice and obtaining information under sections 319.025 and 319.026 concerning the possible location of any underground facilities which may be affected.

319.030. 1. Every person owning or operating an underground facility to whom notice of intent to excavate is required to be given shall, upon receipt of such notice as provided in this section from a person intending to commence an excavation, inform the excavator as promptly

4 as practical, but not in excess of two working days, unless [otherwise mutually agreed,] **the**
5 **excavator agrees to extend the start date and time provided in the locate request through**
6 **methods established by the notification center,** of the approximate location of underground
7 facilities in or near the area of the excavation so as to enable the person engaged in the
8 excavation work to locate the facilities in advance of and during the excavation work, **provided**
9 **that no excavation shall begin earlier than the scheduled excavation date provided on the**
10 **locate request unless the excavator has confirmed that all underground facilities have been**
11 **located.** The two working days provided for notice in this subsection and subsection 1 of section
12 319.026, shall begin at 12:00 a.m. following the receipt of the request by the notification center.
13 **Each underground facility owner receiving notifications from the notification center by use**
14 **of the internet shall, after December 31, 2014, use the locate status system provided by the**
15 **notification center. Those underground facility owners that do not receive notifications by**
16 **use of the internet shall, no later than January 1, 2016, provide locate status to the**
17 **notification center by an alternate method provided by the notification center.** [If the
18 information available to the owner or operator of a pipeline facility or an underground electric
19 or communications cable discloses that valves, vaults or other appurtenances are located in or
20 near the area of excavation, the owner or operator shall either inform the excavator of the
21 approximate location of such appurtenances at the same time and in the same manner as the
22 approximate location of the remainder of the facility is provided, or shall at such time inform the
23 excavator that appurtenances exist in the area and provide a telephone number through which
24 the excavator may contact a representative of the owner or operator who will meet at the site
25 within one working day after request from the excavator and at such meeting furnish the
26 excavator with the available information about the location and nature of such appurtenances.]
27 If the excavator states in the notice of intent to excavate that the excavation will involve
28 trenchless technology, the owner or operator shall inform the excavator of the depth, to the best
29 of his or her knowledge or ability, of the facility according to the records of the owner or
30 operator. The owner or operator shall provide the approximate location of underground facilities
31 by use of markings **as designated in section 319.015.** [If flags or stakes are used, such marking
32 shall be consistent with the color code and other standards for ground markings.] Persons
33 representing the excavator and the owner or operator shall meet on the site of excavation within
34 two working days of a request by either person for such meeting for the purpose of clarifying
35 markings, or upon agreement of the excavator and owner or operator, such meeting may be an
36 alternate means of providing the location of facilities by originally marking the approximate
37 location of the facility at the time of the meeting. If upon receipt of a notice of intent to
38 excavate, an owner or operator determines that he or she neither owns or operates underground
39 facilities in or near the area of excavation, the owner or operator shall within two working days

40 after receipt of the notice, inform the excavator that the owner or operator has no facilities
41 located in the area of the proposed excavation. The owner or operator of the underground facility
42 shall make notice to the excavator that no facilities are located in the area of excavation by
43 contacting the excavator by any of the following methods:

44 (1) By calling the primary number of the excavator or by calling the telephone number
45 of the responsible person as provided by the excavator under subdivision (4) of subsection 2 of
46 section 319.026;

47 (2) By leaving a message on the recording device for such numbers;

48 (3) By calling the cellular telephone number of the excavator or responsible person;

49 (4) By notifying the excavator by facsimile or electronic mail at numbers or addresses
50 stated by the excavator in the notice of excavation made under subsection 2 of section 319.026;

51 (5) By marking "clear" or "OK" at the site of excavation; [or]

52 (6) By verbally informing the excavator in person.

53 If the only means of contacting the excavator is one or more telephone numbers provided by the
54 excavator in the notice of excavation under section 319.026, then two attempts by the
55 underground facility owner to contact the excavator at one of the telephone numbers provided
56 shall constitute compliance with this subsection; or

57 **(7) By use of a locate status system.**

58 2. A record of the date and means of informing the excavator that no facilities were
59 located by the owner or operator shall be included in the written records of the underground
60 facility owner regarding each specific notice of excavation **and shall be retained for a period**
61 **of five years.**

62 3. **If the owner or operator notifies the excavator that the area of excavation cannot**
63 **be determined from the description provided by the excavator through the notice required**
64 **by this section, the excavator shall provide clarification of the area of excavation by**
65 **marking the area with white flags or white paint, or by providing project plans to the**
66 **owner or operator, or by meeting on the site of the excavation with representatives of the**
67 **owner or operator as provided for in this section.**

68 4. In the event that a person owning or operating an underground facility fails to comply
69 with the provisions of subsection 1 of this section after notice given by an excavator in
70 compliance with section 319.026, the excavator, prior to commencing the excavation, shall give
71 a second notice to the notification center as required by section 319.026 stating that there has
72 been no response to the original notice given under section 319.026. After the receipt of the
73 notice stating there has been "no response", the owner or operator of an underground facility
74 shall, within two hours of the receipt of such notice, mark its facilities or contact and inform the
75 excavator of when the facilities will be marked; provided, however, that for "no response"

76 notices made to the notification center by 2:00 p.m., the markings shall be completed on the
77 working day the notice is made to the notification center, and provided that for "no response"
78 notices made to the notification center after 2:00 p.m., the markings shall be completed no later
79 than 10:00 a.m. on the next working day. If an underground facility owner fails to mark its
80 facilities or contact the excavator as required by this subsection, the excavator may commence
81 the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree
82 of care in making the excavation as is otherwise required by law.

83 [4.] 5. For purposes of this section, a period of two working days begins at 12:00 a.m.
84 following when the request is made.

2 **319.031. 1. In addition to the other requirements of section 319.030, the response**
3 **to a notice of intent to excavate received by a sewer system owner, when such owner has**
4 **underground facilities located in the area of excavation identified in the notice and when**
5 **the notice indicates that trenchless excavation methods will be used, shall include a**
6 **determination of whether sewer service connections exist in the area of the excavation.**

7 **2. If the sewer system owner determines that sewer service connections exist in the**
8 **area of the excavation identified in a notice of intent to excavate, the owner shall provide**
9 **his or her best available information, or notice that the information does not exist,**
10 **regarding the location of such connections to the excavator by any of the following**
11 **methods:**

12 **(1) Placing a triangular green mark at the approximate location of the sewer service**
13 **connection pointing in the direction of the customer structure serviced;**

14 **(2) Providing electronic copies of the information to the excavator;**

15 **(3) Delivering copies of the information to the excavator by facsimile or by other**
16 **agreed upon means; or**

17 **(4) Arranging to meet the excavator at the site of the excavation to provide the**
18 **information.**

19 **3. Providing the best available information, or notice that the information does not**
20 **exist, regarding the location of sewer service connections that exist in the area of excavation**
21 **identified in a notice of intent to excavate shall constitute full compliance with this section,**
22 **and a sewer system owner shall not be liable to any party for damages or injuries resulting**
23 **from an excavation if they are in compliance with this section.**

24 **4. Providing the best available information regarding the location of sewer service**
25 **connections that exist in the area of excavation identified in a notice of intent to excavate**
26 **shall not in and of itself constitute ownership, operation, control, or management of sewer**
service lines by a sewer system owner.

319.033. If new lateral sewer pipes or water service lines are installed or connected from or to an underground facility within the public right-of-way, as defined in section 319.015, or if such infrastructure is replaced, or rehabilitated by excavation within the public right-of-way, the facility owner shall be required to place an access point and cleanout at the edge of the public right-of-way at the facility owner's expense. Trace wire shall be placed in the access point and cleanout and shall be designed to give approximate locations of the underground lateral sewer pipe or water service line to mark the location of such pipes and lines in those areas that are located within a public right-of-way, easement, or street. This section shall apply to all installations of water and sewer without regard to their status as underground facilities under section 319.015. The violation of this section shall result in a presumption of negligence against the facility owner failing to provide an access point and cleanout or to install tracer wire or a similar technology, and violators shall be liable for damages caused by their failure to act in accordance with this section.

319.035. 1. Obtaining information as required by sections 319.010 to 319.050 does not excuse any person making any excavation from doing so in a careful and prudent manner.

2. Nothing in sections 319.010 to 319.050 shall relieve an excavator from the obligation to excavate in a safe and prudent manner, nor shall it absolve an excavator from liability for damage to underground facilities.

3. The failure of any excavator to give notice of proposed excavation activities as required by this chapter shall be a rebuttable presumption of negligence on his or her part in the event that such failure shall cause injury, loss, or damage. In addition to any penalties provided herein, liability under common law may apply.

4. The failure of an underground facility owner to mark his or her facilities that are located in an area of excavation described in a notice of intent to excavate received by the underground facility owner, as required by section 319.030, or the failure of an underground facility owner to be a notification center participant, consistent with the provisions of section 319.022, shall be a rebuttable presumption of negligence on the part of such owner in the event that such failure shall cause injury, loss, or damage. In addition to any penalties provided herein, liability under common law may apply.

319.045. 1. [In the event of any damage or dislocation or disturbance of any underground facility in connection with any excavation, the person responsible for the excavation operations shall immediately notify the notification center. This subsection shall be deemed to require reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode protection, permanent above-ground stakes or other such items utilized for protection of the underground facility.

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

16 3.] Any person who violates in any material respect the provisions of section 319.022,
17 319.025, 319.026, [319.029,] 319.030, 319.037, or this section or who willfully damages an
18 underground facility shall be liable to the state of Missouri for a civil penalty of up to ten
19 thousand dollars for each violation for each day such violation persists, except that the maximum
20 penalty for violation of the provisions of sections 319.010 to 319.050 shall not exceed five
21 hundred thousand dollars for any related series of violations. An action to recover such civil
22 penalty may be brought by the attorney general or a prosecuting attorney on behalf of the state
23 of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court,
24 which shall consider the nature, circumstances and gravity of the violation, and with respect to
25 the person found to have committed the violation, the degree of culpability, the absence or
26 existence of prior violations, whether the violation was a willful act, the effect on ability to
27 continue to do business, any good faith in attempting to achieve compliance, ability to pay the
28 penalty, and such other matters as justice may require in determining the amount of penalty
29 imposed.

30 [4.] 2. The attorney general may bring an action in any appropriate circuit court of this
31 state for equitable relief to redress or restrain a violation by any person of any provision of
32 sections 319.010 to 319.050. The court may grant such relief as is necessary or appropriate,
33 including mandatory or prohibitive injunctive relief, temporary or permanent.

34 **3. The attorney general shall make public the aggregate number of enforcement**
35 **actions for the previously completed calendar year prior to March thirty-first of the**
36 **current year.**

319.046. Parties with a dispute related to the provisions of sections 319.015 to
2 **319.050 may request arbitration for disputes of less than five thousand dollars.**

 319.050. 1. The provisions of sections 319.025 and 319.026 shall not apply to any
2 excavation when necessary due to an emergency as defined in section 319.015. An excavation
3 may proceed regarding such emergency, provided all reasonable precautions have been taken to
4 protect the underground facilities. In any such case, the excavator shall give notification,

5 substantially in compliance with section 319.026, as soon as practical, and upon being notified
6 that an emergency exists, each underground facility owner in the area shall, within two hours
7 after receiving such notice, provide markings or contact the excavator with any information
8 immediately available to assist the excavator and shall inform the excavator if not able to mark
9 within the two hours of when the underground facility will be marked at the site of the
10 emergency.

11 **2. For a request submitted as an emergency request that does not meet the**
12 **definition of an emergency as defined in section 319.015, the facility owner shall notify the**
13 **excavator within two hours that the request does not meet the requirements of an**
14 **emergency, and the locate request will be marked within two working days under**
15 **subsection 1 of section 319.030.**

16 **3.** The excavator may be liable to the owner or operator for costs directly associated with
17 the locating of any such underground facility relating to a notification of an emergency that does
18 not meet the definition of emergency as stated in section 319.015.

2 [319.016. Notwithstanding any provision of sections 319.010 to 319.050
3 to the contrary, the state highways and transportation commission shall not be
4 required to be a notification center participant after December 31, 2014, but
5 nothing in this section shall prohibit the commission from voluntarily choosing
6 to be a notification center participant after that date.]

2 [319.028. 1. On or after January 1, 2003, an owner or operator of
3 underground facilities, who has become a participant in the notification center as
4 required in section 319.022, will maintain participation in the notification center,
5 unless it is determined that the inaccuracy rate of the notification center reaches
6 fifteen percent. The accuracy rate shall be determined by the number of
7 notifications of an excavation, where the owner or operator has no underground
8 facilities at the excavation site, as described in the excavators notification,
9 divided by the total number of notifications to an owner or operator of
10 underground facilities during any twelve-month period.

11 2. Once the notification center has an inaccuracy rate of fifteen percent
12 or higher for any owner or operator of underground facilities, then any such
13 owner or operator may withdraw from participation in the notification center by
14 providing written notice to the notification center of its withdrawal. The owner
15 or operator shall then file with the recorder of deeds for each county it has
16 underground facilities a statement that it has underground facilities and a name
17 and phone number of a contact person that excavators shall contact and notify of
18 its intent to excavate. The owner or operator shall also publish, at least quarterly,
19 in a newspaper or other publication of general circulation in counties that have
20 underground facilities a statement that the owner or operator has underground
21 facilities and who the excavator shall contact regarding its intent to excavate.

22 3. After January 1, 2003, in the event that an owner or operator
withdraws from the notification center no party may use in any legal proceeding

23 the fact that an owner or operator has withdrawn from the notification center as
24 evidence to establish negligence, recklessness, lack of adherence to industry
25 standards, or any other manner which would suggest that the owner or operator
26 failed to comply with any standard of care.]

2 [319.029. Notwithstanding the fact that a project is a preengineered
3 project or a permitted project, or that a design request was previously made,
4 excavators connected therewith shall be required to give notification in
5 accordance with sections 319.025 and 319.026 prior to commencement of
excavation.]

2 [319.040. The failure of any excavator to give notice of proposed
3 excavation activities as required by this chapter shall be a rebuttable presumption
4 of negligence on his part in the event that such failure shall cause injury, loss or
5 damage. In addition to any penalties provided herein, liability under common
law may apply.]

2 [319.041. Nothing in the foregoing shall relieve an excavator from the
3 obligation to excavate in a safe and prudent manner, nor shall it absolve an
4 excavator from liability for damage to legally installed facilities.]

Section B. This act shall become effective January 1, 2015.

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