

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1867
97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, May 14, 2014, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

5229S.04C

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319.025, 319.026, 319.027, 319.028, 319.029, 319.030, 319.035, 319.040, 319.041, 319.045, and 319.050, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, 319.033, 319.035, 319.045, 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:

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

(2) "Design request", a request from any person for facility location information for design purposes only;

(3) "Emergency", [either:

(a)] a sudden, unexpected occurrence, presenting a clear and imminent

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

12 danger demanding immediate action to prevent or mitigate loss or damage to life,
13 health, property, or essential public services. "Unexpected occurrence" includes,
14 but is not limited to, thunderstorms, high winds, ice or snow storms, fires, floods,
15 earthquakes, or other soil or geologic movements, riots, accidents, water or
16 wastewater pipe breaks, vandalism, or sabotage]; or

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

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

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

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

48 (7) "Marking", the use of paint, flags, stakes, or other clearly identifiable
49 materials to show the field location of underground facilities, or the area of
50 proposed excavation, in accordance with [the color code standard of the American
51 Public Works Association. Unless otherwise provided by the American Public
52 Works Association, the following color scheme shall be used: blue for potable
53 water; purple for reclaimed water, irrigation and slurry lines; green for sewers
54 and drain lines; red for electric, power lines, cables, conduit and lighting cables;
55 orange for communications, including telephone, cable television, alarm or signal
56 lines, cable or conduit; yellow for gas, oil, steam, petroleum or gaseous materials;
57 white for proposed excavation; pink for temporary marking of construction project
58 site features such as centerline and top of slope and toe of slope] **the marking**
59 **standards for underground facilities as designated by the Common**
60 **Ground Alliance Best Practices Version 10.0 except that "approximate**
61 **location" shall comply with the requirements as set forth in subdivision**
62 **(1) of this section;**

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

77 [(8)] (9) "Notification center participant", an underground facility owner
78 who is a member and participant in the notification center;

79 [(9)] (10) "Permitted project", a project for which a permit for the work
80 to be performed is required to be issued by a local, state or federal agency and,
81 as a prerequisite to receiving such permit, the applicant is required to notify all
82 underground facility owners in the area of the work for purposes of identifying
83 the location of existing underground facilities;

84 [(10)] (11) "Person", any individual, firm, joint venture, partnership,
85 corporation, association, cooperative, municipality, political subdivision,
86 governmental unit, department or agency and shall include a notification center
87 and any trustee, receiver, assignee or personal representative thereof;

88 [(11)] (12) "Pipeline facility" includes[, without limitation, new and
89 existing pipe, rights-of-way, and any equipment, facility, or building used or
90 intended for use in the transportation of gas or the treatment of gas, or used or
91 intended for use in the transportation of hazardous liquids including petroleum,
92 or petroleum products] **all parts of a facility through which a hazardous**
93 **liquid or gas moves in transportation including, but not limited to,**
94 **pipe, valves and other appurtenances connected to pipe, pumping units,**
95 **fabricated assemblies associated with pumping units, metering and**
96 **delivery stations and fabricated assemblies therein, and breakout**
97 **tanks;**

98 [(12)] "Preengineered project", a project which is approved by an agency or
99 political subdivision of the state and for which the agency or political subdivision
100 responsible for the project, as part of its engineering and contract procedures,
101 holds a meeting prior to the commencement of any construction work on such
102 project and in such meeting all persons determined by the agency or political
103 subdivision to have underground facilities located within the excavation area of
104 the project are invited to attend and given an opportunity to verify or inform any
105 agency or political subdivision of the location of their underground facilities, if
106 any, within the excavation area and where the location of all known underground
107 facilities are duly located or noted on the engineering drawing as specifications
108 for the project;]

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

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

117 (15) "Underground facility", any item of personal property which shall be
118 buried or placed below ground for use in connection with the storage or
119 conveyance of water, storm drainage, sewage, telecommunications service, cable

120 television service, electricity, oil, gas, hazardous liquids or other substances, and
121 shall include but not be limited to pipes, sewers, conduits, cables, valves, **vaults**,
122 lines, wires, manholes, attachments, or appurtenances, and those portions of
123 pylons or other supports below ground that are within any public or private
124 street, road or alley, right-of-way dedicated to the public use or utility easement
125 of record, or prescriptive easement. If gas distribution lines or electric lines,
126 telecommunications facilities, cable television facilities, water service lines, water
127 system, storm drainage or sewer system lines, other than those used for vehicular
128 traffic control, lighting of streets and highways and communications for
129 emergency response, are located on private property and are owned solely by the
130 owner or owners of such private property, such lines or facilities receiving service
131 shall not be considered underground facilities for purposes of this chapter, except
132 at locations where they cross or lie within an easement or right-of-way dedicated
133 to public use or owned by a person other than the owner of the private
134 property. Water and sanitary sewer lines providing service to private property
135 that are owned solely by the owner of such property shall not be considered
136 underground facilities at any location. **A structure that transports only**
137 **storm water drainage under roadways, driveways, or railways shall not**
138 **be considered an underground facility.** [Water, storm drainage, cross road
139 drainage, or sewer lines owned by the state highways and transportation
140 commission shall not be considered underground facilities at any location. For
141 railroads regulated by the Federal Railroad Administration, "underground
142 facility" as used in sections 319.015 to 319.050 shall not include any excavating
143 done by a railroad when such excavating is done entirely on land which the
144 railroad owns or on which the railroad operates, or in the event of emergency, on
145 adjacent land];

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

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

319.022. 1. Any person, except a railroad regulated by the Federal
2 Railroad Administration, who installs or otherwise owns or operates an
3 underground facility shall become a participant in a notification center upon first
4 acquiring or owning or operating such underground facility. [Except as provided
5 in section 319.016, all owners and operators of underground facilities within the
6 state shall maintain participation in a notification center.] **All underground**

7 **facility owners within the state shall maintain participation in a**
8 **notification center for the duration of owning and operating such**
9 **underground facility. Such notification center shall be governed by a**
10 **board of directors elected by the membership and composed of**
11 **representatives from the general membership group.**

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

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

36 4.] The notification center shall maintain in its offices and make available
37 to any notification center participant or excavator upon request a current list of
38 the names and addresses of each notification center participant, including the
39 county or counties wherein each participant has underground facilities. The
40 notification center may charge a reasonable fee to notification center participants
41 or excavators requesting such list as is necessary to recover the actual costs of
42 printing and mailing.

43 [5.] 3. Excavators shall be informed of the availability of the list of
44 notification center participants [required in subsection 3 of this section in the
45 manner provided for in section 319.024].

46 [6.] 4. An annual audit or review of the notification center shall be
47 performed by a certified public accountant and a report of the findings submitted
48 to the speaker of the house of representatives and the president pro tem of the
49 senate.

 319.024. 1. Every person owning or operating an underground facility
2 shall assist excavators and the general public in determining the location of
3 underground facilities before excavation activities are begun or as may be
4 required by subsection 6 of section 319.026 or subsection 1 of section 319.030
5 after an excavation has commenced. Methods of informing the public and
6 excavators of the means of obtaining such information may, but need not, include
7 advertising, including advertising in periodicals of general circulation or trade
8 publications, information provided to professional or trade associations which
9 routinely provide information to excavators or design professionals, or sponsoring
10 meetings of excavators and design professionals for such purposes. 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
13 persons. [Every person owning or operating underground facilities who has a
14 written policy in determining the location of its underground facilities shall make
15 available a copy of said policy to any notification center participant or excavator
16 upon request.]

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

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

29 (2) Either directly or through the notification center, notify excavators and

30 the public in the vicinity of his or her underground pipeline facility of the
31 availability of the notification center by including the information set out in
32 subsection 1 of section 319.025 in notifications required by the safety rules of the
33 Missouri public service commission relating to its damage prevention program;

34 (3) Notify excavators annually who give notice of their intent to excavate
35 of the type of 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
2 in section 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
4 of record or within any private street or private property without first giving
5 notice to the notification center and obtaining information concerning the possible
6 location of any underground facilities which may be affected by said excavation
7 from underground facility owners whose names appear on the current list of
8 participants in the notification center and who were communicated to the
9 excavator as notification center participants who would be informed of the
10 excavation notice. [Prior to January 1, 2003, a person shall not make or begin any
11 excavation pursuant to this subsection without also making notice to owners or
12 operators of underground facilities which do not participate in a notification
13 center and whose name appears on the current list of the recorder of deeds in and
14 for the county in which the excavation is to occur. Beginning January 1, 2003,]
15 Notice to the notification center of proposed excavation shall be deemed notice to
16 all owners and operators of underground facilities. The notice referred to in this
17 section shall comply with the provisions of section 319.026.

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

24 3. Notification center participants shall be relieved of the responsibility
25 to respond to a notice of intent to excavate received directly from the person
26 intending to commence an excavation, except for requests for clarification of
27 markings through on-site meetings as provided in subsection 1 of section 319.030
28 and requests for locations at the time of an emergency as provided by section
29 319.050.

30 4. [If the owner or operator notifies the excavator that the area of

31 excavation cannot be determined from the description provided by the excavator
32 through the notice required by this section, the excavator shall provide
33 clarification of the area of excavation by markings or by providing project plans
34 to the owner or operator, or by meeting on the site of the excavation with
35 representatives of the owner or operator as provided by subsection 1 of section
36 319.030.

37 5.] Notwithstanding the provisions of this section to the contrary, a
38 person shall not make or begin any excavation in any state highway, or on the
39 right-of-way of any state highway, without first obtaining a permit from the state
40 highways and transportation commission pursuant to section 227.240, provided
41 however, the provisions of this subsection shall not apply to railroad right-of-way
42 owned or operated by a railroad.

319.026. 1. An excavator shall serve notice of intent to excavate to the
2 notification center by toll-free telephone number operated on a twenty-four hour
3 per-day, seven day per-week basis or by facsimile or by completing notice via the
4 internet at least two working days, but not more than ten working days, before
5 the expected date of commencing the excavation activity. The notification center
6 receiving such notice shall inform the excavator of all notification center
7 participants to whom such notice will be transmitted and shall promptly transmit
8 all details of such notice provided under subsection 2 of this section to every
9 notification center participant in the area of excavation.

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

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

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

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

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

25 primarily responsible for the excavation, the notice shall also state the same
26 information for that person;

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

34 (6) A description of the site of excavation by approximate distance and
35 direction from the nearest state or county road or city street or intersection of
36 such roads or streets unless previously provided under subdivision (5) of this
37 subsection, and the proximity of the site to any prominent landmarks;

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

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

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

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

61 facility, shall make copies of such records available for a reasonable copying fee
62 upon the request of the owner or operator of the underground facilities or the
63 excavator filing the notice.

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

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

97 underground facility.

98 7. Before commencing excavation, the excavator shall determine
99 best practices for confirming the horizontal and vertical location of
100 facilities at the site of excavation considering conditions at the site
101 including geology, access to the site, and the presence of paved
102 surfaces. Hand digging or soft digging shall be used as a best practice
103 when possible.

104 8. In the event of any damage, dislocation, or disturbance of any
105 underground facility in connection with any excavation, the person
106 responsible for the excavation operations shall notify the notification
107 center. This subsection shall be deemed to require reporting of any
108 damage, dislocation, or disturbance to trace wires, encasements,
109 cathode protection, permanent above-ground stakes, or other such
110 items utilized for protection of the underground facility. The excavator
111 shall immediately contact 911 when any damage or contact with a
112 pipeline results in a release from the pipeline of hazardous liquid or
113 gas to occur.

114 9. In the event of any damage, dislocation, or disturbance to any
115 underground facility or any protective devices required to be reported
116 by the excavator under subsection 8 of this section in advance of or
117 during the excavation work, the person responsible for the excavation
118 operations shall not conceal or attempt to conceal such damage,
119 dislocation, or disturbance, nor shall that person attempt to make
120 repairs to the facility unless authorized by the underground facility
121 owner. In the case of sewer lines or facilities, emergency temporary
122 repairs may be made by the excavator after notification without the
123 owners' or operators' authorization to prevent further damage to the
124 facilities. Such emergency repairs shall not relieve the excavator of
125 responsibility to make notification as required by subsection 8 of this
126 section.

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

134 **facility owner specific to damage data submitted shall be accessible**
135 **only to the underground facility owner unless otherwise designated by**
136 **the underground facility owner.**

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

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

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

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

319.030. 1. Every person owning or operating an underground facility to
2 whom notice of intent to excavate is required to be given shall, upon receipt of
3 such notice as provided in this section from a person intending to commence an
4 excavation, inform the excavator as promptly as practical, but not in excess of two
5 working days, unless [otherwise mutually agreed,] **the excavator agrees to**
6 **extend the start date and time provided in the locate request through**
7 **methods established by the notification center, of the approximate location**

8 of underground facilities in or near the area of the excavation so as to enable the
9 person engaged in the excavation work to locate the facilities in advance of and
10 during the excavation work, **provided that no excavation shall begin**
11 **earlier than the scheduled excavation date provided on the locate**
12 **request unless the excavator has confirmed that all underground**
13 **facilities have been located.** The two working days provided for notice in this
14 subsection and subsection 1 of section 319.026, shall begin at 12:00 a.m. following
15 the receipt of the request by the notification center. **Each underground**
16 **facility owner receiving notifications from the notification center by**
17 **use of the internet shall, after December 31, 2014, use the locate status**
18 **system provided by the notification center. Those underground facility**
19 **owners that do not receive notifications by use of the internet shall, no**
20 **later than January 1, 2016, provide locate status to the notification**
21 **center by an alternate method provided by the notification center. [If**
22 the information available to the owner or operator of a pipeline facility or an
23 underground electric or communications cable discloses that valves, vaults or
24 other appurtenances are located in or near the area of excavation, the owner or
25 operator shall either inform the excavator of the approximate location of such
26 appurtenances at the same time and in the same manner as the approximate
27 location of the remainder of the facility is provided, or shall at such time inform
28 the excavator that appurtenances exist in the area and provide a telephone
29 number through which the excavator may contact a representative of the owner
30 or operator who will meet at the site within one working day after request from
31 the excavator and at such meeting furnish the excavator with the available
32 information about the location and nature of such appurtenances.] If the
33 excavator states in the notice of intent to excavate that the excavation will
34 involve trenchless technology, the owner or operator shall inform the excavator
35 of the depth, to the best of his or her knowledge or ability, of the facility
36 according to the records of the owner or operator. The owner or operator shall
37 provide the approximate location of underground facilities by use of markings **as**
38 **designated in section 319.015.** [If flags or stakes are used, such marking shall
39 be consistent with the color code and other standards for ground markings.]
40 Persons representing the excavator and the owner or operator shall meet on the
41 site of excavation within two working days of a request by either person for such
42 meeting for the purpose of clarifying markings, or upon agreement of the
43 excavator and owner or operator, such meeting may be an alternate means of

44 providing the location of facilities by originally marking the approximate location
45 of the facility at the time of the meeting. If upon receipt of a notice of intent to
46 excavate, an owner or operator determines that he or she neither owns or
47 operates underground facilities in or near the area of excavation, the owner or
48 operator shall within two working days after receipt of the notice, inform the
49 excavator that the owner or operator has no facilities located in the area of the
50 proposed excavation. The owner or operator of the underground facility shall
51 make notice to the excavator that no facilities are located in the area of
52 excavation by contacting the excavator by any of the following methods:

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

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

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

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

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

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

64 If the only means of contacting the excavator is one or more telephone numbers
65 provided by the excavator in the notice of excavation under section 319.026, then
66 two attempts by the underground facility owner to contact the excavator at one
67 of the telephone numbers provided shall constitute compliance with this
68 subsection; **or**

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

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

74 3. **If the owner or operator notifies the excavator that the area**
75 **of excavation cannot be determined from the description provided by**
76 **the excavator through the notice required by this section, the excavator**
77 **shall provide clarification of the area of excavation by marking the**
78 **area with white flags or white paint, or by providing project plans to**
79 **the owner or operator, or by meeting on the site of the excavation with**

80 **representatives of the owner or operator as provided for in this section.**

81 4. In the event that a person owning or operating an underground facility
82 fails to comply with the provisions of subsection 1 of this section after notice
83 given by an excavator in compliance with section 319.026, the excavator, prior to
84 commencing the excavation, shall give a second notice to the notification center
85 as required by section 319.026 stating that there has been no response to the
86 original notice given under section 319.026. After the receipt of the notice stating
87 there has been "no response", the owner or operator of an underground facility
88 shall, within two hours of the receipt of such notice, mark its facilities or contact
89 and inform the excavator of when the facilities will be marked; provided, however,
90 that for "no response" notices made to the notification center by 2:00 p.m., the
91 markings shall be completed on the working day the notice is made to the
92 notification center, and provided that for "no response" notices made to the
93 notification center after 2:00 p.m., the markings shall be completed no later than
94 10:00 a.m. on the next working day. If an underground facility owner fails to
95 mark its facilities or contact the excavator as required by this subsection, the
96 excavator may commence the excavation. Nothing in this subsection shall excuse
97 the excavator from exercising the degree of care in making the excavation as is
98 otherwise required by law.

99 [4.] 5. For purposes of this section, a period of two working days begins
100 at 12:00 a.m. following when the request is made.

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

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

14 (1) Placing a triangular green mark at the approximate location
15 of the sewer service connection pointing in the direction of the

16 customer structure serviced;

17 (2) Providing electronic copies of the information to the
18 excavator;

19 (3) Delivering copies of the information to the excavator by
20 facsimile or by other agreed upon means; or

21 (4) Arranging to meet the excavator at the site of the excavation
22 to provide the information.

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

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

319.033. By January 1, 2016, if new lateral sewer pipes or water
2 service lines are installed or connected from or to an underground
3 facility within the public right-of-way, as defined in section 319.015, or
4 if such infrastructure is fully replaced by excavation within the public
5 right-of-way, the facility owner shall be required to place an access
6 point within a protective enclosure over water lines and cleanouts for
7 sewer laterals. All protective enclosures over water service lines and
8 cleanouts for sewer laterals shall be extended to grade and installed so
9 that it is easily accessible. Tracer wire, or other utility location
10 technology, shall be placed within the protective enclosure to provide
11 approximate location of the underground facilities in these areas that
12 are located within a public right-of-way. An underground facility
13 owner shall not be liable to any party for damages or injuries resulting
14 from an excavation if they are in compliance with this section. This
15 section shall apply to all installations of water service lines and sewer
16 laterals without regard to their status as underground facilities under
17 section 319.015. Nothing in this section shall require any owner of
18 underground facilities who is not otherwise required under sections

19 **319.010 to 319.050 to become a notification center participant.**

2 319.035. 1. Obtaining information as required by sections 319.010 to
3 319.050 does not excuse any person making any excavation from doing so in a
4 careful and prudent manner.

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

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

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

23 319.045. 1. [In the event of any damage or dislocation or disturbance of
24 any underground facility in connection with any excavation, the person
25 responsible for the excavation operations shall immediately notify the notification
26 center. This subsection shall be deemed to require reporting of any damage,
27 dislocation, or disturbance to trace wires, encasements, cathode protection,
28 permanent above-ground stakes or other such items utilized for protection of the
29 underground facility.

30 **2. In the event of any damage or dislocation or disturbance to any**
31 **underground facility or any protective devices required to be reported by the**
32 **excavator under subsection 1 of this section, in advance of or during the**
33 **excavation work, the person responsible for the excavation operations shall not**
34 **conceal or attempt to conceal such damage or dislocation or disturbance, nor shall**
35 **that person attempt or make repairs to the facility unless authorized by the**
36 **owner or operator of the facility. In the case of sewer lines or facilities,**

15 emergency temporary repairs may be made by the excavator after notification
16 without the owners' or operators' authorization to prevent further damage to the
17 facilities. Such emergency repairs shall not relieve the excavator of responsibility
18 to make notification as required by subsection 1 of this section.

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

35 [4.] 2. The attorney general may bring an action in any appropriate
36 circuit court of this state for equitable relief to redress or restrain a violation by
37 any person of any provision of sections 319.010 to 319.050. The court may grant
38 such relief as is necessary or appropriate, including mandatory or prohibitive
39 injunctive relief, temporary or permanent.

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

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

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

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

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

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

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

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

12 2. Once the notification center has an inaccuracy rate of
13 fifteen percent or higher for any owner or operator of underground
14 facilities, then any such owner or operator may withdraw from

15 participation in the notification center by providing written notice
16 to the notification center of its withdrawal. The owner or operator
17 shall then file with the recorder of deeds for each county it has
18 underground facilities a statement that it has underground
19 facilities and a name and phone number of a contact person that
20 excavators shall contact and notify of its intent to excavate. The
21 owner or operator shall also publish, at least quarterly, in a
22 newspaper or other publication of general circulation in counties
23 that have underground facilities a statement that the owner or
24 operator has underground facilities and who the excavator shall
25 contact regarding its intent to excavate.

26 3. After January 1, 2003, in the event that an owner or
27 operator withdraws from the notification center no party may use
28 in any legal proceeding the fact that an owner or operator has
29 withdrawn from the notification center as evidence to establish
30 negligence, recklessness, lack of adherence to industry standards,
31 or any other manner which would suggest that the owner or
32 operator failed to comply with any standard of care.]

2 [319.029. Notwithstanding the fact that a project is a
3 preengineered project or a permitted project, or that a design
4 request was previously made, excavators connected therewith shall
5 be required to give notification in 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
3 proposed excavation activities as required by this chapter shall be
4 a rebuttable presumption of negligence on his part in the event
5 that such failure shall cause injury, loss or damage. In addition to
6 any penalties provided herein, liability under common law may
apply.]

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

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