

SECOND REGULAR SESSION

SENATE BILL NO. 904

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Pre-filed January 3, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4109S.01I

AN ACT

To repeal section 319.015, RSMo, and to enact in lieu thereof four new sections relating to underground facilities.

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

Section A. Section 319.015, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 319.015, 319.042, 319.043, and 516.099, to read as follows: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) "Excavation", any operation in which earth, rock or other material on or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall

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

19 not be deemed separate instances of excavation;

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

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

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

46 (6) "Person", any individual, firm, joint venture, partnership, corporation,
47 association, cooperative, municipality, political subdivision, governmental unit,
48 department or agency and shall include a notification center and any trustee,
49 receiver, assignee or personal representative thereof;

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

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

66 (9) "Residential property", any real estate used or intended to be used as
67 a residence by not more than four families on which no underground facilities
68 exist which are owned or operated by any party other than the owner of said
69 property;

70 (10) "Underground facility", any item of personal property which shall be
71 buried or placed below ground for use in connection with the storage or
72 conveyance of water, storm drainage, sewage, telecommunications service, cable
73 television service, electricity, oil, gas, hazardous liquids or other substances, and
74 shall include but not be limited to pipes, sewers, conduits, cables, valves, lines,
75 wires, manholes, attachments, **or appurtenances**, and those portions of pylons
76 or other supports below ground that are within any public or private street, road
77 or alley, right-of-way dedicated to the public use or utility easement of record, or
78 prescriptive easement[; except that where]. **If gas distribution lines or electric**
79 **lines, telecommunications facilities, cable television facilities, water service lines,**
80 **water system, storm drainage or sewer system lines [are and such lines or**
81 **facilities], other than those used for vehicular traffic control, lighting of**
82 **streets and highways, and communications for emergency response, are**
83 **located on private property and** are owned solely by the owner [or owners]
84 of such **private** property, such lines or facilities receiving service shall not be
85 considered underground facilities for purposes of this chapter[; provided, however,
86 for railroads regulated by the Federal Railroad Administration, "underground
87 facility" as used in sections 319.015 to 319.050 shall not include any excavating
88 done by a railroad when such excavating is done entirely on land which the
89 railroad owns or on which the railroad operates, or in the event of emergency, on
90 adjacent land] **except at locations where they cross or lie within an**

91 easement or right-of-way dedicated to public use or owned by a person
92 other than the owner of the private property;

93 (11) "Working day", every day, except Saturday, Sunday or a legally
94 declared local, state or federal holiday.

319.042. 1. An owner or operator shall have no cause of action
2 against an excavator for damage to an underground facility caused by
3 the excavator unless the owner or operator has given notice of the
4 claim as required by section 319.043.

5 2. In an action by an owner or operator against an excavator
6 alleging damage to an underground facility caused by the excavator:

7 (1) The failure of the excavator to give notice of proposed
8 excavation activities as required by this chapter shall give rise to a
9 rebuttable presumption of negligence on the part of the excavator; and

10 (2) The failure of the owner or operator to provide information
11 to the excavator about the location of the underground facility as
12 required by this chapter shall give rise to a rebuttable presumption of
13 negligence on the part of the owner or operator.

14 3. In an action by an owner or operator against an excavator
15 alleging damage to an underground facility caused by the excavator,
16 the court shall award to the prevailing party an attorney's fee in the
17 amount determined by the court to be reasonable and just.

319.043. 1. Provided that an excavator has given notice of
2 damage to an underground facility in substantial compliance with
3 section 319.045, any claim against the excavator on account of such
4 damage shall be made in writing, itemizing the amounts demanded, and
5 served on the excavator by personal delivery or certified mail. Except
6 as provided in subsections 2 to 4 of this section, such claim shall be
7 served by the earlier of the ninetieth day after completion of repairs or
8 the one hundred twentieth day after the date the notice of damage was
9 given by the excavator.

10 2. If an order requiring delay of repairs is issued by lawful
11 authority, with the result that repairs cannot be completed within
12 ninety days after the excavator's notice of damage, and if a copy of the
13 order is delivered to the excavator within such ninety-day period, then
14 the one hundred twenty-day limitation period specified in subsection
15 1 of this section shall not apply, and the claim shall be served within
16 ninety days after completion of repairs.

17 **3. If temporary repairs are required, and if a claim for the cost**
18 **of the temporary repairs is made in the manner and within the time**
19 **limitations set forth in subsection 1 of this section, then an additional**
20 **claim may be served no later than the ninetieth day after completion**
21 **of final repairs, without regard to the one hundred twenty-day**
22 **limitation period specified in subsection 1 of this section.**

23 **4. The limitation periods set forth in this section may be changed**
24 **by written agreement of the excavator and the owner or operator of the**
25 **underground facility.**

26 **5. A claim against an excavator for damage to an underground**
27 **facility shall be unenforceable to the extent that notice of the amount**
28 **of the claim was not given in compliance with the requirements of this**
29 **section.**

30 **6. This section shall not apply to a claim against an excavator if**
31 **the excavator failed to give notice of damage in substantial compliance**
32 **with section 319.045.**

516.099. Any action by the owner or operator of an underground
2 **facility against an excavator to recover damages arising out of damage**
3 **to the underground facility shall be commenced within one year of the**
4 **date the damage occurred, provided that the excavator has given notice**
5 **of the occurrence in accordance with section 319.045, RSMo.**

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