

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1867

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:

1 Section A. Sections 319.015, 319.016, 319.022, 319.024,
2 319.025, 319.026, 319.027, 319.028, 319.029, 319.030, 319.035,
3 319.040, 319.041, 319.045, and 319.050, RSMo, are repealed and
4 thirteen new sections enacted in lieu thereof, to be known as
5 sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027,
6 319.030, 319.031, 319.033, 319.035, 319.045, 319.046, and
7 319.050, to read as follows:

8 319.015. For the purposes of sections 319.010 to 319.050,
9 the following terms mean:

10 (1) "Approximate location", a strip of land not wider than
11 the width of the underground facility plus two feet on either
12 side thereof. In situations where reinforced concrete,
13 multiplicity of adjacent facilities or other unusual specified

1 conditions interfere with location attempts, the owner or
2 operator shall designate to the best of his or her ability an
3 approximate location of greater width;

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

6 (3) "Emergency", [either:

7 (a)] a sudden, unexpected occurrence, presenting a clear and
8 imminent danger demanding immediate action to prevent or mitigate
9 loss or damage to life, health, property, or essential public
10 services. "Unexpected occurrence" includes, but is not limited
11 to, thunderstorms, high winds, ice or snow storms, fires, floods,
12 earthquakes, or other soil or geologic movements, riots,
13 accidents, water or wastewater pipe breaks, vandalism, or
14 sabotage[; or

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

18 (4) "Excavation", any operation in which earth, rock or
19 other material in or on the ground is moved, removed or otherwise
20 displaced by means of any tools, equipment or explosives and
21 includes, without limitation, backfilling, grading, trenching,
22 digging, ditching, pulling material from a ditch but not
23 including routine road maintenance, drilling, well-drilling,
24 augering, boring, tunneling, scraping, cable or pipe plowing,
25 plowing-in, pulling-in, ripping, driving, and demolition of
26 structures, except that, the use of mechanized tools and
27 equipment to break and remove pavement and masonry down only to
28 the depth of such pavement or masonry on roads dedicated to the

1 public use for vehicular traffic, [the use of pressurized air to
2 disintegrate and suction to remove earth, rock and other
3 materials,] the tilling of soil for agricultural [or seeding]
4 purposes when such excavation does not exceed sixteen inches in
5 depth, [and] the installation of marking flags and stakes and the
6 use of pressurized air to disintegrate and suction to remove
7 earth, rock, or other materials for the location of underground
8 facilities [that are not driven] shall not be deemed excavation.
9 Backfilling or moving earth on the ground in connection with
10 other excavation operations at the same site shall not be deemed
11 separate instances of excavation. For railroads regulated by the
12 Federal Railroad Administration, "excavation" shall not include
13 any excavating done by a railroad when such excavating is done
14 entirely on land that the railroad owns or on which the railroad
15 operates, or in the event of an emergency, excavating done by a
16 railroad on adjacent land;

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

20 (6) "Locate status", the underground facility owner's
21 designation of the status of the locate request to the
22 notification center which then makes that information available
23 to the person making the locate request through electronic or
24 other means;

25 (7) "Marking", the use of paint, flags, stakes, or other
26 clearly identifiable materials to show the field location of
27 underground facilities, or the area of proposed excavation, in
28 accordance with [the color code standard of the American Public

1 Works Association. Unless otherwise provided by the American
2 Public Works Association, the following color scheme shall be
3 used: blue for potable water; purple for reclaimed water,
4 irrigation and slurry lines; green for sewers and drain lines;
5 red for electric, power lines, cables, conduit and lighting
6 cables; orange for communications, including telephone, cable
7 television, alarm or signal lines, cable or conduit; yellow for
8 gas, oil, steam, petroleum or gaseous materials; white for
9 proposed excavation; pink for temporary marking of construction
10 project site features such as centerline and top of slope and toe
11 of slope] the marking standards for underground facilities as
12 designated by the Common Ground Alliance Best Practices Version
13 10.0 except that "approximate location" shall comply with the
14 requirements as set forth in subdivision (1) of this section;

15 [(7)] (8) "Notification center", a statewide organization
16 operating twenty-four hours a day, three hundred sixty-five days
17 a year on a not-for-profit basis, supported by [its participants,
18 or by more than one operator of underground facilities, having as
19 its principal purpose the statewide receipt and dissemination to
20 participating owners and operators of underground facilities of
21 information concerning intended excavation activities in the area
22 where such owners and operators have underground facilities, and
23 open to participation by any and all such owners and operators on
24 a fair and uniform basis. Such notification center shall be
25 governed by a board of directors elected by the membership and
26 composed of representatives from each general membership group,
27 provided that one of the board members shall be a representative
28 of the state highways and transportation commission so long as

1 the commission is a participant in the notification center] a
2 majority of the underground facility owners in the state of
3 Missouri;

4 [(8)] (9) "Notification center participant", an underground
5 facility owner who is a member and participant in the
6 notification center;

7 [(9)] (10) "Permitted project", a project for which a permit
8 for the work to be performed is required to be issued by a local,
9 state or federal agency and, as a prerequisite to receiving such
10 permit, the applicant is required to notify all underground
11 facility owners in the area of the work for purposes of
12 identifying the location of existing underground facilities;

13 [(10)] (11) "Person", any individual, firm, joint venture,
14 partnership, corporation, association, cooperative, municipality,
15 political subdivision, governmental unit, department or agency
16 and shall include a notification center and any trustee,
17 receiver, assignee or personal representative thereof;

18 [(11)] (12) "Pipeline facility" includes[, without
19 limitation, new and existing pipe, rights-of-way, and any
20 equipment, facility, or building used or intended for use in the
21 transportation of gas or the treatment of gas, or used or
22 intended for use in the transportation of hazardous liquids
23 including petroleum, or petroleum products] all parts of a
24 facility through which a hazardous liquid or gas moves in
25 transportation including, but not limited to, pipe, valves and
26 other appurtenances connected to pipe, pumping units, fabricated
27 assemblies associated with pumping units, metering and delivery
28 stations and fabricated assemblies therein, and breakout tanks;

1 [(12) "Preengineered project", a project which is approved
2 by an agency or political subdivision of the state and for which
3 the agency or political subdivision responsible for the project,
4 as part of its engineering and contract procedures, holds a
5 meeting prior to the commencement of any construction work on
6 such project and in such meeting all persons determined by the
7 agency or political subdivision to have underground facilities
8 located within the excavation area of the project are invited to
9 attend and given an opportunity to verify or inform any agency or
10 political subdivision of the location of their underground
11 facilities, if any, within the excavation area and where the
12 location of all known underground facilities are duly located or
13 noted on the engineering drawing as specifications for the
14 project;]

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

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

24 (15) "Underground facility", any item of personal property
25 which shall be buried or placed below ground for use in
26 connection with the storage or conveyance of water, storm
27 drainage, sewage, telecommunications service, cable television
28 service, electricity, oil, gas, hazardous liquids or other

1 substances, and shall include but not be limited to pipes,
2 sewers, conduits, cables, valves, vaults, lines, wires, manholes,
3 attachments, or appurtenances, and those portions of pylons or
4 other supports below ground that are within any public or private
5 street, road or alley, right-of-way dedicated to the public use
6 or utility easement of record, or prescriptive easement. If gas
7 distribution lines or electric lines, telecommunications
8 facilities, cable television facilities, water service lines,
9 water system, storm drainage or sewer system lines, other than
10 those used for vehicular traffic control, lighting of streets and
11 highways and communications for emergency response, are located
12 on private property and are owned solely by the owner or owners
13 of such private property, such lines or facilities receiving
14 service shall not be considered underground facilities for
15 purposes of this chapter, except at locations where they cross or
16 lie within an easement or right-of-way dedicated to public use or
17 owned by a person other than the owner of the private property.
18 Water and sanitary sewer lines providing service to private
19 property that are owned solely by the owner of such property
20 shall not be considered underground facilities at any location.
21 A structure that transports only storm water drainage under
22 roadways, driveways, or railways shall not be considered an
23 underground facility. [Water, storm drainage, cross road
24 drainage, or sewer lines owned by the state highways and
25 transportation commission shall not be considered underground
26 facilities at any location. For railroads regulated by the
27 Federal Railroad Administration, "underground facility" as used
28 in sections 319.015 to 319.050 shall not include any excavating

1 done by a railroad when such excavating is done entirely on land
2 which the railroad owns or on which the railroad operates, or in
3 the event of emergency, on adjacent land];

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

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

8 319.022. 1. Any person, except a railroad regulated by the
9 Federal Railroad Administration, who installs or otherwise owns
10 or operates an underground facility shall become a participant in
11 a notification center upon first acquiring or owning or operating
12 such underground facility. [Except as provided in section
13 319.016, all owners and operators of underground facilities
14 within the state shall maintain participation in a notification
15 center.] All underground facility owners within the state shall
16 maintain participation in a notification center for the duration
17 of owning and operating such underground facility. Such
18 notification center shall be governed by a board of directors
19 elected by the membership and composed of representatives from
20 the general membership group.

21 2. [All owners and operators of underground facilities which
22 are located in a county of the first classification or second
23 classification within the state who are not members of a
24 notification center on August 28, 2001, shall become participants
25 in the notification center prior to January 1, 2003. Any person
26 who installs or otherwise becomes an owner or operator of an
27 underground facility which is located within a county of the
28 first classification or second classification on or after January

1 1, 2003, shall become a participant in the notification center
2 within thirty days of acquiring or operating such underground
3 facility. Beginning January 1, 2003, all owners and operators of
4 underground facilities which are located in a county of the first
5 classification or second classification within the state shall
6 maintain participation in the notification center except as
7 provided otherwise in section 319.016.

8 3. All owners and operators of underground facilities which
9 are located in a county of the third classification or fourth
10 classification within the state who are not members of a
11 notification center on August 28, 2001, shall become participants
12 in the notification center prior to January 1, 2005. Any person
13 who installs or otherwise becomes an owner or operator of an
14 underground facility which is located within a county of the
15 third classification or fourth classification on or after January
16 1, 2005, shall become a participant in the notification center
17 within thirty days of acquiring or operating such underground
18 facility. Beginning January 1, 2005, all owners and operators of
19 underground facilities which are located in a county of the third
20 classification or fourth classification within the state shall
21 maintain participation in the notification center except as
22 provided otherwise in section 319.016.

23 4.] The notification center shall maintain in its offices
24 and make available to any notification center participant or
25 excavator upon request a current list of the names and addresses
26 of each notification center participant, including the county or
27 counties wherein each participant has underground facilities.
28 The notification center may charge a reasonable fee to

1 notification center participants or excavators requesting such
2 list as is necessary to recover the actual costs of printing and
3 mailing.

4 [5.] 3. Excavators shall be informed of the availability of
5 the list of notification center participants [required in
6 subsection 3 of this section in the manner provided for in
7 section 319.024].

8 [6.] 4. An annual audit or review of the notification
9 center shall be performed by a certified public accountant and a
10 report of the findings submitted to the speaker of the house of
11 representatives and the president pro tem of the senate.

12 319.024. 1. Every person owning or operating an
13 underground facility shall assist excavators and the general
14 public in determining the location of underground facilities
15 before excavation activities are begun or as may be required by
16 subsection 6 of section 319.026 or subsection 1 of section
17 319.030 after an excavation has commenced. Methods of informing
18 the public and excavators of the means of obtaining such
19 information may, but need not, include advertising, including
20 advertising in periodicals of general circulation or trade
21 publications, information provided to professional or trade
22 associations which routinely provide information to excavators or
23 design professionals, or sponsoring meetings of excavators and
24 design professionals for such purposes. Information provided by
25 the notification center on behalf of persons owning or operating
26 an underground facility shall be deemed in compliance with this
27 section by such persons. [Every person owning or operating
28 underground facilities who has a written policy in determining

1 the location of its underground facilities shall make available a
2 copy of said policy to any notification center participant or
3 excavator upon request.]

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

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

19 (2) Either directly or through the notification center,
20 notify excavators and the public in the vicinity of his or her
21 underground pipeline facility of the availability of the
22 notification center by including the information set out in
23 subsection 1 of section 319.025 in notifications required by the
24 safety rules of the Missouri public service commission relating
25 to its damage prevention program;

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

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

23 2. An excavator's notice to owners and operators of
24 underground facilities participating in the notification center
25 pursuant to section 319.022 is ineffective for purposes of
26 subsection 1 of this section unless given to such notification
27 center. ~~]~~ [Prior to January 1, 2003, the notice required by
28 subsection 1 of this section shall be given directly to owners or

1 operators of underground facilities who are not represented by a
2 notification center.]

3 3. Notification center participants shall be relieved of
4 the responsibility to respond to a notice of intent to excavate
5 received directly from the person intending to commence an
6 excavation, except for requests for clarification of markings
7 through on-site meetings as provided in subsection 1 of section
8 319.030 and requests for locations at the time of an emergency as
9 provided by section 319.050.

10 4. [If the owner or operator notifies the excavator that the
11 area of excavation cannot be determined from the description
12 provided by the excavator through the notice required by this
13 section, the excavator shall provide clarification of the area of
14 excavation by markings or by providing project plans to the owner
15 or operator, or by meeting on the site of the excavation with
16 representatives of the owner or operator as provided by
17 subsection 1 of section 319.030.

18 5.] Notwithstanding the provisions of this section to the
19 contrary, a person shall not make or begin any excavation in any
20 state highway, or on the right-of-way of any state highway,
21 without first obtaining a permit from the state highways and
22 transportation commission pursuant to section 227.240, provided
23 however, the provisions of this subsection shall not apply to
24 railroad right-of-way owned or operated by a railroad.

25 319.026. 1. An excavator shall serve notice of intent to
26 excavate to the notification center by toll-free telephone number
27 operated on a twenty-four hour per-day, seven day per-week basis
28 or by facsimile or by completing notice via the internet at least

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

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

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

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

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

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

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

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

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

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

22 3. The notification center receiving such notice shall
23 solicit all information required by subsection 2 of this section
24 and shall require the excavator to provide all such information
25 before notice by the excavator is deemed to be completed pursuant
26 to sections 319.015 to 319.050. The notification center shall
27 transmit all details of such notice as required by this section.

28 4. A record of each notice of intent to excavate shall be

1 maintained by the notification center [or, prior to January 1,
2 2003, by the nonmember owner or operator receiving direct
3 notifications] for a period of five years. The record shall
4 include the date the notice was received and all information
5 required by subsection 2 of this section which was provided by
6 the excavator and a record of the underground facility owners
7 notified by the notification center. If the notification center
8 creates a record of the notice by telephonic recording, such
9 record of the original notice shall be maintained for one year
10 from the date of receipt. Records of notices to excavate
11 maintained by the notification center in electronic form shall be
12 deemed to be records under this subsection. Persons holding
13 records of notices of intent to excavate and records of
14 information provided to the excavator by the notification center
15 or owner or operator of the facility, shall make copies of such
16 records available for a reasonable copying fee upon the request
17 of the owner or operator of the underground facilities or the
18 excavator filing the notice.

19 5. If in the course of excavation the person responsible
20 for the excavation operations discovers that the owner or
21 operator of the underground facility who is a participant in a
22 notification center has incorrectly located the underground
23 facility, he or she shall notify the notification center which
24 shall inform the [notification center participant. If the owner
25 or operator of the underground facility is not a participant in a
26 notification center prior to the January 1, 2003, effective date
27 for mandatory participation pursuant to section 319.022, the
28 person responsible for the excavation shall notify the owner.]

1 underground facility owner. The underground facility owner shall
2 respond to the incorrect locate notification within two hours of
3 receipt of the notification by contacting the person responsible
4 for the excavation or by correctly locating their underground
5 facility. The person responsible for maintaining records of the
6 location of underground facilities for the notification center
7 participant shall correct such records to show the actual
8 location of such facilities, if current records are incorrect.

9 6. When markings have been provided in response to a notice
10 of intent to excavate, excavators may commence or continue to
11 work within the area described in the notice for so long as the
12 markings are visible. If an excavator is unable to begin the
13 excavation within ten working days as described in the request,
14 the excavator shall make a relocate request before beginning the
15 excavation. If markings become unusable due to weather,
16 construction or other cause, the excavator shall contact the
17 notification center to request remarking. Such notice shall be
18 given in the same manner as original notice of intent to
19 excavate, and the owner or operator shall remark the site in the
20 same manner, within the same time, as required in response to an
21 original notice of intent to excavate. Each excavator shall
22 exercise reasonable care not to unnecessarily disturb or
23 obliterate markings provided for location of underground
24 facilities. If remarking is required due to the excavator's
25 failure to exercise reasonable care, or if repeated unnecessary
26 requests for remarking are made by an excavator even though the
27 markings are visible and usable, the excavator may be liable to
28 the owner or operator for the reasonable cost of such remarking.

1 Nothing in this section shall allow any person other than the
2 facility owner or their representative to mark or relocate any
3 underground facility.

4 7. Before commencing excavation, the excavator shall
5 determine best practices for confirming the horizontal and
6 vertical location of facilities at the site of excavation
7 considering conditions at the site including geology, access to
8 the site, and the presence of paved surfaces. Hand digging or
9 soft digging shall be used as a best practice when possible.

10 8. In the event of any damage, dislocation, or disturbance
11 of any underground facility in connection with any excavation,
12 the person responsible for the excavation operations shall notify
13 the notification center. This subsection shall be deemed to
14 require reporting of any damage, dislocation, or disturbance to
15 trace wires, encasements, cathode protection, permanent
16 above-ground stakes, or other such items utilized for protection
17 of the underground facility. The excavator shall immediately
18 contact 911 when any damage or contact with a pipeline results in
19 a release from the pipeline of hazardous liquid or gas to occur.

20 9. In the event of any damage, dislocation, or disturbance
21 to any underground facility or any protective devices required to
22 be reported by the excavator under subsection 8 of this section
23 in advance of or during the excavation work, the person
24 responsible for the excavation operations shall not conceal or
25 attempt to conceal such damage, dislocation, or disturbance, nor
26 shall that person attempt to make repairs to the facility unless
27 authorized by the underground facility owner. In the case of
28 sewer lines or facilities, emergency temporary repairs may be

1 made by the excavator after notification without the owners' or
2 operators' authorization to prevent further damage to the
3 facilities. Such emergency repairs shall not relieve the
4 excavator of responsibility to make notification as required by
5 subsection 8 of this section.

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

17 319.027. 1. Any person may make design requests by
18 contacting the notification center. Such design requests shall
19 include all information deemed necessary by the notification
20 center to complete the notice, including the identification of
21 the person and a description of the location of the project being
22 designed and other information similar to that required of
23 excavators under section 319.026.

24 2. Design requests shall be made to the notification center
25 at least five working days, but not more than ten working days,
26 before the date the person has requested receiving the
27 information from the underground facility owner. Upon receipt of
28 a design request, the notification center shall inform the person

1 of the name of all notification center participants to whom the
2 notice will be transmitted and shall promptly transmit such
3 notice to the appropriate underground facility owners.

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

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

20 319.030. 1. Every person owning or operating an
21 underground facility to whom notice of intent to excavate is
22 required to be given shall, upon receipt of such notice as
23 provided in this section from a person intending to commence an
24 excavation, inform the excavator as promptly as practical, but
25 not in excess of two working days, unless [otherwise mutually
26 agreed,] the excavator agrees to extend the start date and time
27 provided in the locate request through methods established by the
28 notification center, of the approximate location of underground

1 facilities in or near the area of the excavation so as to enable
2 the person engaged in the excavation work to locate the
3 facilities in advance of and during the excavation work, provided
4 that no excavation shall begin earlier than the scheduled
5 excavation date provided on the locate request unless the
6 excavator has confirmed that all underground facilities have been
7 located. The two working days provided for notice in this
8 subsection and subsection 1 of section 319.026, shall begin at
9 12:00 a.m. following the receipt of the request by the
10 notification center. Each underground facility owner receiving
11 notifications from the notification center by use of the internet
12 shall, after December 31, 2014, use the locate status system
13 provided by the notification center. Those underground facility
14 owners that do not receive notifications by use of the internet
15 shall, no later than January 1, 2016, provide locate status to
16 the notification center by an alternate method provided by the
17 notification center. [If the information available to the owner
18 or operator of a pipeline facility or an underground electric or
19 communications cable discloses that valves, vaults or other
20 appurtenances are located in or near the area of excavation, the
21 owner or operator shall either inform the excavator of the
22 approximate location of such appurtenances at the same time and
23 in the same manner as the approximate location of the remainder
24 of the facility is provided, or shall at such time inform the
25 excavator that appurtenances exist in the area and provide a
26 telephone number through which the excavator may contact a
27 representative of the owner or operator who will meet at the site
28 within one working day after request from the excavator and at

1 such meeting furnish the excavator with the available information
2 about the location and nature of such appurtenances.] If the
3 excavator states in the notice of intent to excavate that the
4 excavation will involve trenchless technology, the owner or
5 operator shall inform the excavator of the depth, to the best of
6 his or her knowledge or ability, of the facility according to the
7 records of the owner or operator. The owner or operator shall
8 provide the approximate location of underground facilities by use
9 of markings as designated in section 319.015. [If flags or stakes
10 are used, such marking shall be consistent with the color code
11 and other standards for ground markings.] Persons representing
12 the excavator and the owner or operator shall meet on the site of
13 excavation within two working days of a request by either person
14 for such meeting for the purpose of clarifying markings, or upon
15 agreement of the excavator and owner or operator, such meeting
16 may be an alternate means of providing the location of facilities
17 by originally marking the approximate location of the facility at
18 the time of the meeting. If upon receipt of a notice of intent
19 to excavate, an owner or operator determines that he or she
20 neither owns or operates underground facilities in or near the
21 area of excavation, the owner or operator shall within two
22 working days after receipt of the notice, inform the excavator
23 that the owner or operator has no facilities located in the area
24 of the proposed excavation. The owner or operator of the
25 underground facility shall make notice to the excavator that no
26 facilities are located in the area of excavation by contacting
27 the excavator by any of the following methods:

- 28 (1) By calling the primary number of the excavator or by

1 calling the telephone number of the responsible person as
2 provided by the excavator under subdivision (4) of subsection 2
3 of section 319.026;

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

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

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

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

13 (6) By verbally informing the excavator in person.
14

15 If the only means of contacting the excavator is one or more
16 telephone numbers provided by the excavator in the notice of
17 excavation under section 319.026, then two attempts by the
18 underground facility owner to contact the excavator at one of the
19 telephone numbers provided shall constitute compliance with this
20 subsection; or

21 (7) By use of a locate status system.

22 2. A record of the date and means of informing the
23 excavator that no facilities were located by the owner or
24 operator shall be included in the written records of the
25 underground facility owner regarding each specific notice of
26 excavation and shall be retained for a period of five years.

27 3. If the owner or operator notifies the excavator that the
28 area of excavation cannot be determined from the description

1 provided by the excavator through the notice required by this
2 section, the excavator shall provide clarification of the area of
3 excavation by marking the area with white flags or white paint,
4 or by providing project plans to the owner or operator, or by
5 meeting on the site of the excavation with representatives of the
6 owner or operator as provided for in this section.

7 4. In the event that a person owning or operating an
8 underground facility fails to comply with the provisions of
9 subsection 1 of this section after notice given by an excavator
10 in compliance with section 319.026, the excavator, prior to
11 commencing the excavation, shall give a second notice to the
12 notification center as required by section 319.026 stating that
13 there has been no response to the original notice given under
14 section 319.026. After the receipt of the notice stating there
15 has been "no response", the owner or operator of an underground
16 facility shall, within two hours of the receipt of such notice,
17 mark its facilities or contact and inform the excavator of when
18 the facilities will be marked; provided, however, that for "no
19 response" notices made to the notification center by 2:00 p.m.,
20 the markings shall be completed on the working day the notice is
21 made to the notification center, and provided that for "no
22 response" notices made to the notification center after 2:00
23 p.m., the markings shall be completed no later than 10:00 a.m. on
24 the next working day. If an underground facility owner fails to
25 mark its facilities or contact the excavator as required by this
26 subsection, the excavator may commence the excavation. Nothing
27 in this subsection shall excuse the excavator from exercising the
28 degree of care in making the excavation as is otherwise required

1 by law.

2 [4.] 5. For purposes of this section, a period of two
3 working days begins at 12:00 a.m. following when the request is
4 made.

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

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

18 (1) Placing a triangular green mark at the approximate
19 location of the sewer service connection pointing in the
20 direction of the customer structure serviced;

21 (2) Providing electronic copies of the information to the
22 excavator;

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

25 (4) Arranging to meet the excavator at the site of the
26 excavation to provide the information.

27 3. Providing the best available information, or notice that
28 the information does not exist, regarding the location of sewer

1 service connections that exist in the area of excavation
2 identified in a notice of intent to excavate shall constitute
3 full compliance with this section, and a sewer system owner shall
4 not be liable to any party for damages or injuries resulting from
5 an excavation if they are in compliance with this section.

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

11 319.033. By January 1, 2016, if new lateral sewer pipes or
12 water service lines are installed and connected to an underground
13 facility within the public right-of-way, as defined in section
14 319.015, or if such infrastructure is fully replaced by
15 excavation within the public right-of-way, the facility owner
16 shall be required to place tracer wire or other utility location
17 technology and an access point within a protective enclosure over
18 water lines and cleanouts for gravity sewer laterals. For sewer
19 laterals operating under pressure or vacuum, the facility owner
20 shall be required to place an access point within a protective
21 enclosure and shall not be required to place a cleanout. All
22 protective enclosures and cleanouts shall be extended to grade
23 and installed so that it is easily accessible. For water service
24 lines and sewer laterals operating under pressure or vacuum,
25 tracer wire, or other utility location technology, shall be
26 placed within the protective enclosure to provide approximate
27 location of the underground facilities in these areas that are
28 located within a public right-of-way. An underground facility

1 owner shall not be liable to any party for damages or injuries
2 resulting from an excavation if they are in compliance with this
3 section. This section shall apply to all installations of water
4 service lines and sewer laterals without regard to their status
5 as underground facilities under section 319.015. Nothing in this
6 section shall require any owner of underground facilities who is
7 not otherwise required under sections 319.010 to 319.050 to
8 become a notification center participant.

9 319.035. 1. Obtaining information as required by sections
10 319.010 to 319.050 does not excuse any person making any
11 excavation from doing so in a careful and prudent manner.

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

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

22 4. The failure of an underground facility owner to mark his
23 or her facilities that are located in an area of excavation
24 described in a notice of intent to excavate received by the
25 underground facility owner, as required by section 319.030, or
26 the failure of an underground facility owner to be a notification
27 center participant, consistent with the provisions of section
28 319.022, shall be a rebuttable presumption of negligence on the

1 part of such owner in the event that such failure shall cause
2 injury, loss, or damage. In addition to any penalties provided
3 herein, liability under common law may apply.

4 319.045. 1. [In the event of any damage or dislocation or
5 disturbance of any underground facility in connection with any
6 excavation, the person responsible for the excavation operations
7 shall immediately notify the notification center. This
8 subsection shall be deemed to require reporting of any damage,
9 dislocation, or disturbance to trace wires, encasements, cathode
10 protection, permanent above-ground stakes or other such items
11 utilized for protection of the underground facility.

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

26 3.] Any person who violates in any material respect the
27 provisions of section 319.022, 319.025, 319.026, [319.029,]
28 319.030, 319.037, or this section or who willfully damages an

1 underground facility shall be liable to the state of Missouri for
2 a civil penalty of up to ten thousand dollars for each violation
3 for each day such violation persists, except that the maximum
4 penalty for violation of the provisions of sections 319.010 to
5 319.050 shall not exceed five hundred thousand dollars for any
6 related series of violations. An action to recover such civil
7 penalty may be brought by the attorney general or a prosecuting
8 attorney on behalf of the state of Missouri in any appropriate
9 circuit court of this state. Trial thereof shall be before the
10 court, which shall consider the nature, circumstances and gravity
11 of the violation, and with respect to the person found to have
12 committed the violation, the degree of culpability, the absence
13 or existence of prior violations, whether the violation was a
14 willful act, the effect on ability to continue to do business,
15 any good faith in attempting to achieve compliance, ability to
16 pay the penalty, and such other matters as justice may require in
17 determining the amount of penalty imposed.

18 [4.] 2. The attorney general may bring an action in any
19 appropriate circuit court of this state for equitable relief to
20 redress or restrain a violation by any person of any provision of
21 sections 319.010 to 319.050. The court may grant such relief as
22 is necessary or appropriate, including mandatory or prohibitive
23 injunctive relief, temporary or permanent.

24 3. The attorney general shall make public the aggregate
25 number of enforcement actions for the previously completed
26 calendar year prior to March thirty-first of the current year.

27 319.046. Parties with a dispute related to the provisions
28 of sections 319.015 to 319.050 may request arbitration for

1 disputes of less than five thousand dollars.

2 319.050. 1. The provisions of sections 319.025 and 319.026
3 shall not apply to any excavation when necessary due to an
4 emergency as defined in section 319.015. An excavation may
5 proceed regarding such emergency, provided all reasonable
6 precautions have been taken to protect the underground
7 facilities. In any such case, the excavator shall give
8 notification, substantially in compliance with section 319.026,
9 as soon as practical, and upon being notified that an emergency
10 exists, each underground facility owner in the area shall, within
11 two hours after receiving such notice, provide markings or
12 contact the excavator with any information immediately available
13 to assist the excavator and shall inform the excavator if not
14 able to mark within the two hours of when the underground
15 facility will be marked at the site of the emergency.

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

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

27 [319.016. Notwithstanding any provision of
28 sections 319.010 to 319.050 to the contrary, the state
29 highways and transportation commission shall not be
30 required to be a notification center participant after

1 December 31, 2014, but nothing in this section shall
2 prohibit the commission from voluntarily choosing to be
3 a notification center participant after that date.】
4

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

19 2. Once the notification center has an inaccuracy
20 rate of fifteen percent or higher for any owner or
21 operator of underground facilities, then any such owner
22 or operator may withdraw from participation in the
23 notification center by providing written notice to the
24 notification center of its withdrawal. The owner or
25 operator shall then file with the recorder of deeds for
26 each county it has underground facilities a statement
27 that it has underground facilities and a name and phone
28 number of a contact person that excavators shall
29 contact and notify of its intent to excavate. The
30 owner or operator shall also publish, at least
31 quarterly, in a newspaper or other publication of
32 general circulation in counties that have underground
33 facilities a statement that the owner or operator has
34 underground facilities and who the excavator shall
35 contact regarding its intent to excavate.

36 3. After January 1, 2003, in the event that an
37 owner or operator withdraws from the notification
38 center no party may use in any legal proceeding the
39 fact that an owner or operator has withdrawn from the
40 notification center as evidence to establish
41 negligence, recklessness, lack of adherence to industry
42 standards, or any other manner which would suggest that
43 the owner or operator failed to comply with any
44 standard of care.】
45

46 [319.029. Notwithstanding the fact that a project
47 is a preengineered project or a permitted project, or
48 that a design request was previously made, excavators
49 connected therewith shall be required to give
50 notification in accordance with sections 319.025 and
51 319.026 prior to commencement of excavation.】

1 [319.040. The failure of any excavator to give
2 notice of proposed excavation activities as required by
3 this chapter shall be a rebuttable presumption of
4 negligence on his part in the event that such failure
5 shall cause injury, loss or damage. In addition to any
6 penalties provided herein, liability under common law
7 may apply.]
8

9 [319.041. Nothing in the foregoing shall relieve
10 an excavator from the obligation to excavate in a safe
11 and prudent manner, nor shall it absolve an excavator
12 from liability for damage to legally installed
13 facilities.]
14

15 Section B. This act shall become effective January 1, 2015.
16