

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 133

103RD GENERAL ASSEMBLY

0382S.03C

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, and to enact in lieu thereof eleven new sections relating to underground facilities.

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

Section A. Sections 319.015, 319.022, 319.024, 319.025,
2 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, are
3 repealed and eleven new sections enacted in lieu thereof, to be
4 known as sections 319.015, 319.019, 319.022, 319.024, 319.025,
5 319.026, 319.027, 319.030, 319.031, 319.034, and 319.035, to
6 read as follows:

319.015. For the purposes of sections 319.010 to
2 319.050, the following terms mean:

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

11 (2) **"Best practices", the Common Ground Alliance Best**
12 **Practices for protecting vital underground facilities,**
13 **sponsored by the Department of Transportation as described**

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

in 49 U.S.C. Section 6105(a), as amended. The Common Ground Alliance Best Practices shall be read in conjunction with Missouri law; in any instance in which such best practices conflict with state law, state law shall control;

(3) "Careful and prudent", conducting excavation using best practices;

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

(5) "Detectible underground location device", any device that is installed underground and that is capable of being detected from above ground with an electronic locating device, including a locator strip or locator wire;

(6) "Electronic white lining", the process in which an excavator identifies where a proposed excavation will occur by drawing a polygon shape on a GIS map, transmitted in a manner that may then be delivered by the notification center to its member operator;

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

[(4)] (8) "Excavation", any operation in which earth, rock or other material in 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, pulling material from a ditch [but not including] not in conjunction with routine

road maintenance, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures[, except that,]. **Exemptions to this definition include:**

routine road maintenance, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry on roads dedicated to the public use for vehicular traffic, the tilling of soil for agricultural purposes when such excavation does not exceed sixteen inches in depth, the installation of marking flags and stakes and the use of pressurized air to disintegrate and **the** suction to remove earth, rock, or other materials for the location of underground facilities [shall not be deemed excavation]. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation. For railroads regulated by the Federal Railroad Administration, "excavation" shall not include any excavating done by a railroad when such excavating is done entirely on land that the railroad owns or on which the railroad operates, or in the event of an emergency, excavating done by a railroad on adjacent land;

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

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

(11) "Locator strip", a type of detectible underground location device that consists of a plastic or other durable

78 material ribbon containing a material capable of being
79 detected from above ground with an electronic locating
80 device and color coded by type of underground facility;

81 (12) "Locator wire", a type of detectible underground
82 location device that consists of a copper wire or metallic,
83 conductive, noncorrosive trace wire capable of being
84 detected from above ground with an electronic locating
85 device;

86 [(7)] (13) "Marking", the use of paint, flags, stakes,
87 or other clearly identifiable materials to show the field
88 location of underground facilities, or the area of proposed
89 excavation, in accordance with the marking standards for
90 underground facilities as designated by the Common Ground
91 Alliance Best Practices [Version 10.0] except that
92 "approximate location" shall comply with the requirements as
93 set forth in subdivision (1) of this section;

94 [(8)] (14) "Notification center", a statewide
95 organization operating twenty-four hours a day, three
96 hundred sixty-five days a year on a not-for-profit basis,
97 supported by a majority of the underground facility owners
98 in the state of Missouri;

99 [(9)] (15) "Notification center participant", an
100 underground facility owner who is a member and participant
101 in the notification center;

102 [(10)] (16) "Permitted project", a project for which a
103 permit for the work to be performed is required to be issued
104 by a local, state or federal agency and, as a prerequisite
105 to receiving such permit, the applicant is required to
106 notify all underground facility owners in the area of the
107 work for purposes of identifying the location of existing
108 underground facilities;

109 [(11)] (17) "Person", any individual, firm, joint
110 venture, partnership, corporation, association, cooperative,
111 municipality, political subdivision, governmental unit,
112 department or agency and shall include a notification center
113 and any trustee, receiver, assignee or personal
114 representative thereof;

115 [(12)] (18) "Pipeline facility" includes all parts of
116 a facility through which a hazardous liquid or gas moves in
117 transportation including, but not limited to, pipe, valves
118 and other appurtenances connected to pipe, pumping units,
119 fabricated assemblies associated with pumping units,
120 metering and delivery stations and fabricated assemblies
121 therein, and breakout tanks;

122 (19) "Reasonable care", includes compliance with
123 **Common Ground Alliance Best Practices;**

124 (20) "Start date of work", the date provided by the
125 **excavator on the notice of intent to excavate that**
126 **identifies the date of intention to begin excavation;**

127 [(13)] (21) "State plane coordinates", a system of
128 locating a point on a flat plane developed by the National
129 Oceanic and Atmospheric Administration and utilized by state
130 agencies, local governments, and other persons to designate
131 the site of a construction project;

132 [(14)] (22) "Trenchless excavation", horizontal
133 excavation parallel to the surface of the earth which does
134 not use trenching or vertical digging as the primary means
135 of excavation, including but not limited to directional
136 boring, tunneling, or augering;

137 [(15)] (23) "Underground facility", any item of
138 personal property which shall be buried or placed below
139 ground for use in connection with the storage or conveyance
140 of water, storm drainage, sewage, telecommunications

141 **service, broadband** service, cable television service,
142 electricity, oil, gas, hazardous liquids or other
143 substances, and shall include but not be limited to pipes,
144 sewers, conduits, cables, valves, vaults, **fiber optic or**
145 **other** lines, wires, manholes, attachments, or appurtenances,
146 and those portions of pylons or other supports below ground
147 that are within any public or private street, road or alley,
148 right-of-way dedicated to the public use or utility easement
149 of record, or prescriptive easement. If gas distribution
150 lines or electric lines, telecommunications **or broadband**
151 facilities, cable television facilities, water service
152 lines, water system, storm drainage or sewer system lines,
153 other than those used for vehicular traffic control,
154 lighting of streets and highways and communications for
155 emergency response, are located on private property and are
156 owned solely by the owner or owners of such private
157 property, such lines or facilities receiving service shall
158 not be considered underground facilities for purposes of
159 this chapter, except at locations where they cross or lie
160 within an easement or right-of-way dedicated to public use
161 or owned by a person other than the owner of the private
162 property. Water and sanitary sewer lines providing service
163 to private property that are owned solely by the owner of
164 such property shall not be considered underground facilities
165 at any location. A structure that transports only storm
166 water drainage under roadways, driveways, or railways shall
167 not be considered an underground facility;

168 [(16)] (24) "Underground facility owner", any person
169 who owns or operates underground facilities;

170 [(17)] (25) "Working day", every day, except Saturday,
171 Sunday or a legally declared state or federal holiday.

319.019. The underground facility owner shall ensure that all new and active underground facilities installed on any real property after August 28, 2025, with the exception of storm sewers and sanitary sewer mains and laterals installed at depths more than six feet, shall be installed with a detectible underground location device unless the facility is capable of being detected from above ground with an electronic locating device.

319.022. 1. Any person, except a railroad regulated by the Federal Railroad Administration, who installs or otherwise owns or operates an underground facility shall become a participant in a notification center upon first acquiring or owning or operating such underground facility. All underground facility owners within the state shall maintain participation in a notification center for the duration of owning and operating such underground facility.

2. Such notification center shall be governed by a board of directors elected by the membership and composed of representatives from the general membership group, **plus four voting directors from other damage prevention stakeholders within the construction industry, three of whom shall be from a heavy civil, site grading, road or highway contractor and one of whom shall be from a utility or underground contractor; provided, however, that none of the directors appointed shall work for a contractor that owns or operates an underground facility. The appointed directors shall be subject to the bylaws and policies of the notification center.**

[2.] 3. The notification center shall maintain in its offices and make available to any notification center participant or excavator upon request a current list of the names and addresses of each notification center participant,

including the county or counties wherein each participant has underground facilities. The notification center may charge a reasonable fee to notification center participants or excavators requesting such list as is necessary to recover the actual costs of printing and mailing.

[3.] 4. Excavators shall be informed of the availability of the list of notification center participants.

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

319.024. 1. Every person owning or operating an underground facility shall assist excavators and the general public in determining the location of underground facilities before excavation activities are begun or as may be required by subsection [6] 7 of section 319.026 or subsection 1 of section 319.030 after an excavation has commenced. Methods of informing the public and excavators of the means of obtaining such information may, but need not, include advertising, including advertising in periodicals of general circulation or trade publications, information provided to professional or trade associations which routinely provide information to excavators or design professionals, or sponsoring meetings of excavators and design professionals for such purposes. Information provided by the notification center on behalf of persons owning or operating an underground facility shall be deemed in compliance with this section by such persons.

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

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

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

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

319.025. 1. Except as provided in subsection 4 of section 319.030 and in section 319.050, **[a person] an excavator** shall not make or begin any excavation in any public street, road or alley, right-of-way dedicated to the public use or utility easement of record or within any private street or private property **[without first giving] until such excavator gives** notice to the notification center and **[obtaining] obtains** information concerning the possible

9 location of any underground facilities which may be affected
10 by said excavation from underground facility owners whose
11 names appear on the current list of participants in the
12 notification center and who were communicated to the
13 excavator as notification center participants who would be
14 informed of the excavation notice. Notice to the
15 notification center of proposed excavation shall be deemed
16 notice to all owners and operators of underground facilities
17 **and shall have an operational life ending at 11:59 pm twenty-**
18 **one consecutive calendar days from the start date of work.**

19 The notice referred to in this section shall comply with the
20 provisions of section 319.026.

21 2. An excavator's notice to owners and operators of
22 underground facilities participating in the notification
23 center pursuant to section 319.022 is ineffective for
24 purposes of subsection 1 of this section unless given to
25 such notification center.

26 3. Notification center participants shall be relieved
27 of the responsibility to respond to a notice of intent to
28 excavate received directly from the person intending to
29 commence an excavation, except for requests for
30 clarification of markings through on-site meetings as
31 provided in subsection 1 of section 319.030 and requests for
32 locations at the time of an emergency as provided by section
33 319.050.

34 4. Notwithstanding the provisions of this section to
35 the contrary, a person shall not make or begin any
36 excavation in any state highway, or on the right-of-way of
37 any state highway, without first obtaining a permit from the
38 state highways and transportation commission pursuant to
39 section 227.240, provided however, the provisions of this

40 subsection shall not apply to railroad right-of-way owned or
41 operated by a railroad.

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

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

15 (1) The name and telephone number of the person filing
16 the notice of excavation, if the telephone number is
17 different than that of the excavator, and the name, address,
18 **and** telephone number of the excavator [and whether the
19 excavator's telephone is equipped with a recording device];

20 (2) The date the excavation activity is expected to
21 commence, the depth of planned excavation and, if
22 applicable, that the use of explosives is anticipated on the
23 excavation site, and the type of excavation being planned,
24 including whether the excavation involves trenchless
25 excavation;

26 (3) The [facsimile number,] email address[,] and
27 cellular telephone number of the excavator, if any;

28 (4) The name of the person primarily responsible for
29 conducting the excavation or managing the excavation
30 process, and if any of the information stated in subdivision

(1) or (3) of this subsection is different for the person primarily responsible for the excavation, the notice shall also state the same information for that person;

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

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

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

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

3. When the location of the planned excavation cannot be clearly identified solely by the means described in subdivision (5) of subsection 2 of this section, the excavator may also designate the planned excavation route or area to be excavated by physical white lining using white paint, stakes, whiskers, or other similar markings on and

63 along the area to be excavated, or by electronic white
64 lining when available through the notification center. Such
65 information may be provided to the notification center prior
66 to or with the notification required under this section.
67 Nothing in this section shall conflict with sections
68 319.024, 319.025, or 319.030.

69 4. The notification center receiving such notice shall
70 solicit all information required by subsection 2 of this
71 section and shall require the excavator to provide all such
72 information before notice by the excavator is deemed to be
73 completed pursuant to sections 319.015 to 319.050. The
74 notification center shall transmit all details of such
75 notice as required by this section.

76 [4.] 5. A record of each notice of intent to excavate
77 shall be maintained by the notification center for a period
78 of five years. The record shall include the date the notice
79 was received and all information required by subsection 2 of
80 this section which was provided by the excavator and a
81 record of the underground facility owners notified by the
82 notification center. If the notification center creates a
83 record of the notice by telephonic recording, such record of
84 the original notice shall be maintained for one year from
85 the date of receipt. Records of notices to excavate
86 maintained by the notification center in electronic form
87 shall be deemed to be records under this subsection.
88 Persons holding records of notices of intent to excavate and
89 records of information provided to the excavator by the
90 notification center or owner or operator of the facility
91 shall make copies of such records available for a reasonable
92 copying fee upon the request of the owner or operator of the
93 underground facilities or the excavator filing the notice.

[5.] 6. If in the course of excavation the person responsible for the excavation operations discovers that the owner or operator of the underground facility who is a participant in a notification center has incorrectly located the underground facility, **or if the discovery of an underground facility is not marked**, he or she shall notify the notification center which shall inform the underground facility owner. The underground facility owner shall respond to the incorrect locate notification within two hours of receipt of the notification by contacting the person responsible for the excavation or by correctly locating their underground facility. The person responsible for maintaining records of the location of underground facilities for the notification center participant shall correct such records to show the actual location of such facilities, if current records are incorrect.

[6.] 7. When markings have been provided in response to a notice of intent to excavate, excavators may commence or continue to work within the area described in the notice **[for so] until the notice of intent to excavate expiration date as** long as the markings are visible. If an excavator is unable to begin the excavation within ten working days as described in the request, the excavator shall make a relocate request before beginning the excavation. If markings become unusable due to weather, construction or other cause, the excavator shall contact the notification center to request remarking. Such notice shall be given in the same manner as original notice of intent to excavate, and the owner or operator shall remark the site in the same manner, within the same time, as required in response to an original notice of intent to excavate. Each excavator shall exercise reasonable care not to unnecessarily disturb or

obliterate markings provided for location of underground facilities. If remarking is required due to the excavator's failure to exercise reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even though the markings are visible and usable, the excavator may be liable to the owner or operator for the reasonable cost of such remarking. Nothing in this section shall allow any person other than the facility owner or their representative to mark or relocate any underground facility.

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

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

[9.] 10. In the event of any damage, dislocation, or disturbance to any underground facility or any protective devices required to be reported by the excavator under

subsection [8] 9 of this section in advance of or during the excavation work, the person responsible for the excavation operations shall not conceal or attempt to conceal such damage, dislocation, or disturbance, nor shall that person attempt to make repairs to the facility unless authorized by the underground facility owner. In the case of sewer lines or facilities, emergency temporary repairs may be made by the excavator after notification without the owners' or operators' authorization to prevent further damage to the facilities. Such emergency repairs shall not relieve the excavator of responsibility to make notification as required by subsection [8] 9 of this section.

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

319.027. 1. Any person may make design requests by contacting the notification center. Such design requests shall include all information deemed necessary by the notification center to complete the notice, including the identification of the person and a description of the

6 location of the project being designed and other information
7 similar to that required of excavators under section 319.026.

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

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

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

319.030. 1. Every person owning or operating an
2 underground facility to whom notice of intent to excavate is
3 required to be given shall, upon receipt of such notice as

provided in this section from a person intending to commence an excavation, inform the excavator as promptly as practical, but not in excess of two working days, unless the excavator agrees to extend the start date and time provided in the locate request through methods established by the notification center, of the approximate location of underground facilities in or near the area of the excavation so as to enable the person engaged in the excavation work to locate the facilities in advance of and during the excavation work, provided that no excavation shall begin earlier than the scheduled excavation date provided on the locate request unless the excavator has confirmed that all underground facilities have been located. The two working days provided for notice in this subsection and subsection 1 of section 319.026 shall begin at 12:00 a.m. following the receipt of the request by the notification center. Each underground facility owner receiving notifications from the notification center by use of the internet shall, after December 31, 2014, use the locate status system provided by the notification center. Those underground facility owners that do not receive notifications by use of the internet shall, no later than January 1, 2016, provide locate status to the notification center by an alternate method provided by the notification center. If the excavator states in the notice of intent to excavate that the excavation will involve trenchless technology, the owner or operator shall inform the excavator of the depth, to the best of his [or], her, **or its** knowledge or ability, of the facility according to the records of the owner or operator. The owner or operator shall provide the approximate location of underground facilities by use of markings as designated in section 319.015. Persons representing the excavator and the

owner or operator shall meet on the site of excavation within two working days of a request by either person for such meeting for the purpose of clarifying markings, or upon agreement of the excavator and owner or operator, such meeting may be an alternate means of providing the location of facilities by originally marking the approximate location of the facility at the time of the meeting. If upon receipt of a notice of intent to excavate, an owner or operator determines that he or she neither owns or operates underground facilities in or near the area of excavation, the owner or operator shall within two working days after receipt of the notice, inform the excavator that the owner or operator has no facilities located in the area of the proposed excavation. The owner or operator of the underground facility shall make notice to the excavator that no facilities are located in the area of excavation by contacting the excavator by any of the following methods:

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

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

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

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

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

(6) By verbally informing the excavator in person.

68 If the only means of contacting the excavator is one or more
69 telephone numbers provided by the excavator in the notice of
70 excavation under section 319.026, then two attempts by the
71 underground facility owner to contact the excavator at one
72 of the telephone numbers provided shall constitute
73 compliance with this subsection; or

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

75 2. A record of the date and means of informing the
76 excavator that no facilities were located by the owner or
77 operator shall be included in the written records of the
78 underground facility owner regarding each specific notice of
79 excavation and shall be retained for a period of five years.

80 3. If the owner or operator notifies the excavator
81 that the area of excavation cannot be determined from the
82 description provided by the excavator through the notice
83 required by this section, the excavator shall provide
84 clarification of the area of excavation by marking the area
85 with white flags or white paint, or by providing project
86 plans to the owner or operator, or by meeting on the site of
87 the excavation with representatives of the owner or operator
88 as provided for in this section.

89 4. In the event that a person owning or operating an
90 underground facility fails to comply with the provisions of
91 subsection 1 of this section after notice given by an
92 excavator in compliance with section 319.026, the excavator,
93 prior to commencing the excavation, shall give a second
94 notice to the notification center as required by section
95 319.026 stating that there has been no response to the
96 original notice given under section 319.026. After the
97 receipt of the notice stating there has been "no response",
98 the owner or operator of an underground facility shall,
99 within two hours of the receipt of such notice, mark its

100 facilities or contact and inform the excavator of when the
101 facilities will be marked; provided, however, that for "no
102 response" notices made to the notification center by 2:00
103 p.m., the markings shall be completed on the working day the
104 notice is made to the notification center, and provided that
105 for "no response" notices made to the notification center
106 after 2:00 p.m., the markings shall be completed no later
107 than 10:00 a.m. on the next working day. If an underground
108 facility owner fails to mark its facilities or contact the
109 excavator as required by this subsection, the excavator may
110 commence the excavation. Nothing in this subsection shall
111 excuse the excavator from exercising the degree of care in
112 making the excavation as is otherwise required by law.

113 5. For purposes of this section, a period of two
114 working days begins at 12:00 a.m. following when the request
115 is made.

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

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

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

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

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

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

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

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

319.034. For purposes of sections 319.010 to 319.050, the location of underground facilities provided by a facility owner or operator in accordance with section 319.026 to any person engaging in scheduled excavating shall be accurate. If any underground facility becomes damaged by an excavator due to the furnishing of incorrect information as to its location by the facility owner or operator, the excavator shall not be subject to any liability resulting from damage to the underground facility as a result of the

10 **excavating, provided that such person engaging in scheduled**
11 **excavating complies with the requirements of sections**
12 **319.010 to 319.050 with respect to such excavation and there**
13 **is no evidence visible and obvious to the excavator of the**
14 **presence of a mismarked underground facility.**

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

5 2. Nothing in sections 319.010 to 319.050 shall
6 relieve an excavator from the obligation to excavate in a
7 safe and prudent manner, nor shall it absolve an excavator
8 from liability for damage to underground facilities **except**
9 **as provided in section 319.034.**

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

16 4. The failure of an underground facility owner **or a**
17 **locator or other contractor engaged by the facility owner** to
18 mark **[his or her]** **the facility owner's** facilities that are
19 located in an area of excavation described in a notice of
20 intent to excavate received by the underground facility
21 owner, as required by section 319.030, or the failure of an
22 underground facility owner to be a notification center
23 participant, consistent with the provisions of section
24 319.022, shall be a rebuttable presumption of negligence on
25 the part of such owner, **and of the locator or other**
26 **contractor engaged by the facility owner,** in the event that
27 such failure shall cause injury, loss, or damage. In

28 addition to any penalties provided herein, liability under
29 common law may apply.

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