

FIRST REGULAR SESSION

SENATE BILL NO. 134

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S0263.02I

AN ACT

To repeal sections 319.015, 319.022, 319.023, 319.024, 319.025, 319.026, 319.030, 319.045 and 319.050, RSMo 1994, relating to underground facility safety and damage prevention, and to enact in lieu thereof ten new sections relating to the same subject, with a termination date for certain sections.

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

Section A. Sections 319.015, 319.022, 319.023, 319.024, 319.025, 319.026, 319.030, 319.045 and 319.050, RSMo 1994, are repealed and ten new sections enacted in lieu thereof, to be known as sections 319.015, 319.022, 319.023, 319.024, 319.025, 319.026, 319.030, 319.041, 319.045 and 319.050, to read as follows:

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

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

(2) "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, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement

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

or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation;

(3) "Marking", the use of stakes, paint or other clearly identifiable materials to show the field location of underground facilities, or the area of proposed excavation, in accordance with the color code standard of the American Public Works Association. Unless otherwise provided by the American Public Works Association, the following color scheme shall be used, [unless otherwise agreed to by both parties or their authorized agents]: blue for water irrigation and slurry lines; green for sewers and drain lines; red for electric, powerlines, cables, conduit and lighting cables; orange for communications, including telephone, **cable television**, alarm or signal lines, cable or conduit; yellow for gas, oil, steam, petroleum or gaseous materials; white for area of proposed excavation; [florescent] **fluorescent** pink for temporary marking of construction project site features such as centerline and top of slope and toe of slope;

(4) "Notification center", [an] a **statewide** organization operating **twenty-four hours per day, three hundred sixty-five days per year** on a not for profit basis, supported by its participants, or by more than one operator of underground facilities, having as its principal purpose the statewide receipt and dissemination to participating owners and operators of underground facilities of information concerning intended excavation activities in the area where such owners and operators have underground facilities, and open to participation by any and all such owners and operators on a fair and uniform basis;

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

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

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

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

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

(9) "Underground facility", any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, storm drainage, sewage, electronic, telephonic, or telegraphic data communications, cable television, electric energy, oil, gas, hazardous liquids or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those portions of pylons or other supports below ground that are within any public or private street, road or alley, right-of-way dedicated to the public use or utility easement of record, or prescriptive easement, except that gas distribution lines or electric, telephone, television cable, water, storm drainage or sewer lines [owned solely by the owner or owners of] **located on** the real property to which such lines provide service **and owned solely by the owner or owners of such real property** shall not be considered underground facilities for purposes of this chapter;

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

319.022. 1. Owners and operators of underground pipeline facilities in compliance with federal law shall, and owners and operators of other underground facilities may, participate in a notification center. **The provisions of this subsection shall expire on December 31, 2000.**

2. All owners and operators of underground facilities within Missouri who are not members of a notification center on August 28, 1999, shall become a participant in the notification center prior to January 1, 2001. Any person who shall install or otherwise become an owner or operator of an underground facility on or after January 1, 2001, shall become a participant in the notification center within thirty days after first owning or operating such underground facility. Effective January 1, 2001, all owners and operators of underground facilities in Missouri shall maintain participation in the notification center.

3. [A] The notification center shall [file with the recorder of deeds, in every county wherein any of the owners and operators which it represents have underground facilities, the name, address and telephone number of the notification center to which telephonic or written inquiries concerning the location of underground facilities may be addressed and a] maintain in its offices and make available upon the request of any person a current list of the names and addresses of each owner and operator [which the organization represents] participating in the notification center, including the county or counties wherein each owner or

operator has underground facilities. The notification center may charge a reasonable fee to persons requesting such list as necessary to recover the costs of printing and mailing.

4. The availability of the list of participants in the notification center required by subsection 3 of this section shall be made known to excavators with information required pursuant to subsection 2 of section 319.024.

319.023. 1. Except for owners and operators who are participants in a notification center which [has filed a statement with the recorder of deeds,] **maintains and makes available a current list of participants** pursuant to section 319.022, all **owners and** operators having underground facilities within a county shall file with the recorder of deeds in any such county a notice that such operator has underground facilities located within the county and the address and the telephone number of the person or persons from whom information about the location of such underground facilities may be obtained.

2. The recorder of deeds shall maintain a current list of all owners and operators who have filed statements [individually and through notification centers] pursuant to this chapter and shall make copies of such list available to any person upon request.

3. The provisions of this section shall expire on December 31, 2000.

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 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. [Owners and operators who are participants in a notification center may meet the requirements of this section through the notification center.] **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.** Every person owning or operating underground facilities who has a written policy in determining the location of its underground facilities shall make available a copy of said policy to any person upon request.

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 five years 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** 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 directly **prior to January 1, 2001**, or through a notification center, of the type of [temporary] marking to be provided and how to identify the markings.

319.025. 1. Except as provided in sections 319.030 and 319.050, a person 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[, when necessary to determine proximity to underground facilities,] giving notice to and obtaining information concerning the possible location of any underground facilities which may be affected by said excavation from each and every owner and operator of underground facilities whose name appears on the current list of [the recorder of deeds in and for the county in which the excavation is to be made] **participants in the notification center. Prior to December 31, 2000, a person shall not make or begin any excavation governed by this subsection without also making notice to owners or operators of underground facilities which do not participate in a notification center and whose name appears on the current list of the recorder of deeds in and for the county in which the excavation is to be made. Effective January 1, 2001, notice to the notification center of proposed excavation shall be deemed notice to all owners and operators of underground facilities.** The notice referred to herein shall comply with the provisions of section 319.026.

2. [An excavator's notice to a notification center shall be deemed notice to all owners and operators of underground facilities represented by such notification center.] An excavator's notice to owners and operators of underground facilities [who are represented by a notification center according to the current list of the recorder of deeds] **participating in the notification center pursuant to section 319.022** is ineffective for purposes of subsection 1 of this section unless given to such notification center. **Prior to January 1, 2001**, the notice required by subsection 1 of this section shall be given directly to owners or operators of underground facilities who are not represented by a notification center.

3. If the excavator is engaged in trenching, ditching, drilling, well-drilling or -driving and, if upon notification by the excavator as provided [under] **pursuant to** section 319.026, the owner

or operator notifies the excavator that the area of excavation cannot be determined from the description provided by the excavator, the excavator shall mark the proposed area of excavation prior to marking of location by the owner or operator of the facility.

319.026. 1. An excavator shall serve notice of intent to excavate to the notification center by toll-free telephone number operated on a twenty-four hour per day, seven day per week basis or **prior to January 1, 2001**, to individual nonparticipant owners or operators at least two [full] working days, but not more than ten working days, before commencing the excavation activity. The notification center receiving such notice shall inform the excavator of all owners, operators and other persons to whom such notice will be transmitted and shall promptly transmit such notice to every public utility, municipal corporation and all persons owning or operating an underground facility in the area of excavation and which are participants in and have registered their locations with the notification center.

2. Each notice of intent to excavate given hereunder shall contain the name, address and telephone number of the person filing the notice of intent, the name, address and telephone number, **and facsimile number, if any**, of the excavator, the date the excavation activity is to commence, the depth of planned excavation and, if applicable, that the use of explosives is anticipated on the excavation site, and the type of excavation being planned, including whether the excavation involves tunneling or horizontal boring. The notice shall also specify the location of the excavation by any one or more of the following means: by reference to a specific street address, or by reference to platted lot number of record, or by reference to specific quarter section, and shall state whether excavation is to take place within the city limits.

3. A written record of each notice of intent to excavate shall be maintained by the notification center or, **prior to January 1, 2001, by the** nonmember owner or operator receiving direct notifications for a period of five years. The record shall include the date the notice was received and all information required by subsection 2 of this section which was provided by the excavator. If the recipient creates a record of the notice by computer or telephonic recording, such record of the original notice shall be maintained for one year from the date of receipt. Persons holding records of notices of intent to excavate and records of information provided to the excavator by the notification center or owner or operator of the facility, shall make copies of such records available for a reasonable copying fee upon the request of the owner or operator of the underground facilities or the excavator filing the notice.

4. 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, he **or she** shall notify the **notification center, which shall inform the participating** owner or operator. **If the owner or operator of the underground facility is not a participant in a notification center prior to the January 1, 2001 effective date for mandatory participation pursuant to**

section 319.022, the person responsible for the excavation shall notify the owner or operator. The person responsible for maintaining records of the location of underground facilities for the owner or operator shall correct such records to show the actual location of such facilities, if current records are incorrect.

5. Notwithstanding the fact that a project is a preengineered project or a permitted project, excavators connected therewith shall be required to give notification in accordance with this section prior to commencement of [construction or] excavation[, whichever event first occurs].

6. Once markings have been furnished in response to a notice of intent to excavate, excavators may continue to work within the area described in the notice so long as the markings are visible. 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, and 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 because of an excavator's failure to exercise such reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even though the markings are visible and useable, the excavator may be liable to the owner or operator for the reasonable cost of such remarking.

319.030. 1. Every person owning or operating an underground facility to whom notice of intent to excavate is required to be given [hereunder through a notification center or directly] shall, upon receipt of such notice as provided herein from a person intending to commence an excavation, inform the excavator as promptly as practical, but not in excess of two working days from receipt of the notice, unless otherwise mutually agreed, 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. If the excavator states in the notice of intent to excavate that the excavation will involve tunneling or horizontal boring, the owner or operator shall inform the excavator of the depth, to the best of his **or her** 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 [marking or any other usual and customary means of providing the approximate location. Upon agreement of the excavator and the owner or operator of the underground facility, location may be provided by an alternative means such as an on-site meeting or other conference between representatives of the excavator and the owner or operator] **markings**. If the owner or operator determines that marking is not feasible due to terrain or other physical conditions at the site, he **or she** shall notify the excavator that marking cannot be used and advise the excavator of another

means of location which will be used. If location is not marked, the excavator may request additional information in locating the facility if needed to avoid damage to the facility and the same shall be provided by the owner or operator within twenty-four hours of such request. If stakes are used, staking shall be consistent with the color code and other standards for ground markings. Persons representing the excavator and the owner or operator shall meet on the site of excavation within [forty-eight hours] **two working days** of a request by either person for such meeting for the purpose of clarifying [ground] 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 [no] **it neither owns nor operates** underground facilities [are located] 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 [are] located in the area **of the proposed excavation**. A record of the date and means of informing the excavator that no facilities were located by the owner or operator, shall be included in the written records required by subsection 3 of section 319.026.

2. Owners and operators of underground facilities who are [represented by a] **participants in the** notification center according to the current list [of the recorder of deeds] **maintained in the offices of the notification center** shall be relieved of the responsibility to respond to notices of intent to excavate received directly from the person intending to commence an excavation, except for requests for clarification of [ground] markings through on-site meetings and requests for locations at the time of an emergency as provided by section 319.050.

3. In the event that a person owning or operating an underground facility fails to comply with the provisions of subsection 1 of this section after notice given by an excavator in compliance with section 319.026, the excavator, prior to commencing the excavation, shall [directly contact the appropriate owners or operators of underground facilities to obtain location information or special instructions for proceeding with the excavation at that location] **give a second notice to the same entity to whom the original notice was made as required by section 319.026**. If, after the receipt of the [direct contact by the excavator] **second notice**, the owner or operator of an underground facility fails to provide the excavator with location information [or special instructions] during the next working day, the excavator may commence the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree of care in making the excavation as is otherwise required by law.

4. As used in this section, a period of two working days shall begin upon receipt of the excavator's notice of intent to excavate or upon receipt of a request for a meeting and shall end on the second working day thereafter at the same time of day. If the excavator's notice of intent to excavate or a request for a meeting is received on a

working day before 8:00 a.m., such period of time shall begin at 8:00 a.m. of that day. If the excavator's notice of intent to excavate or a request for a meeting is received after 5:00 p.m. on a working day, or at any time on a day that is not a working day, then such period of time shall begin at 8:00 a.m. of the first working day after the day of actual receipt.

319.041. No owner or operator of an underground facility who fails to participate in the notification center after January 1, 2001, shall be allowed to recover damages resulting from any excavation for which notice of intent to excavate was made pursuant to section 319.026.

319.045. 1. In the event of any damage or dislocation or disturbance of any underground facility in connection with any excavation, the person responsible for the excavation operations shall immediately notify the notification center and the owner or operator of the facility or the owner or operator, **if known**, if it is not a participant in the notification center[.] **prior to January 1, 2001. On and after January 1, 2001, the responsible party shall notify the notification center only.**

2. In the event of any damage or dislocation or disturbance to any underground facility in advance of or during the excavation work, the person responsible for the excavation operations shall not conceal or attempt to conceal such damage or dislocation or disturbance, nor shall that person attempt or make repairs to the facility unless authorized by the owner or operator of the facility. 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 1 of this section.

3. Any person who violates in any material respect the provisions of section 319.022, 319.023, 319.025, 319.026, 319.030 or 319.045 [of this chapter] or who willfully damages an underground facility shall be liable to the state of Missouri for a civil penalty of up to ten thousand dollars for each violation for each day such violation persists, except that the maximum penalty for violation of the provisions of sections 319.010 to 319.050 shall not exceed five hundred thousand dollars for any related series of violations. An action to recover such civil penalty may be brought by the attorney general or a prosecuting attorney on behalf of the state of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court, which shall consider the nature, circumstances and gravity of the violation, and with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice may require in determining the amount of penalty imposed.

4. The attorney general may bring an action in any appropriate circuit court of this state

for equitable relief to redress or restrain a violation by any person of any provision of sections 319.010 to 319.050. The court may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, temporary or permanent.

319.050. The provisions of sections 319.025 and 319.026 shall not apply when making an excavation at times of emergency [involving danger to life, health or property,] **resulting from a sudden, unexpected occurrence, including 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, fires, floods, earthquakes or other soil or geologic movements, riots, accidents, vandalism or sabotage which cause damage to subsurface facilities requiring immediate repair. An excavator may proceed regarding such emergency,** provided all reasonable precautions have been taken to protect the underground facilities. In any such case, the excavator shall give notification, substantially in compliance with section 319.026, as soon as practical, and upon being notified that an emergency exists, each owner and operator of an underground facility in the area shall immediately provide all location information reasonably available to any excavator who requests the same.

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