

FIRST REGULAR SESSION

# HOUSE BILL NO. 437

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FUNDERBURK (Sponsor), MILLER, SMITH (85),  
ROORDA AND ENGLISH (Co-sponsors).

0791L.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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, 319.042, 319.045, and 319.050, RSMo, and to enact in lieu thereof eleven new sections relating to underground facility safety, with an effective date.

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

Section A. Sections 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 2 319.028, 319.029, 319.030, 319.035, 319.040, 319.041, 319.042, 319.045, and 319.050, RSMo, 3 are repealed and eleven new sections enacted in lieu thereof, to be known as sections 319.015, 4 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.035, 319.045, 319.046, and 319.050, 5 to read as follows:

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

- 2 (1) "Approximate location", a strip of land not wider than the width of the underground  
3 facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity  
4 of adjacent facilities or other unusual specified conditions interfere with location attempts, the  
5 owner or operator shall designate to the best of his or her ability an approximate location of  
6 greater width;
- 7 (2) "Design request", a request from any person for facility location information for  
8 design purposes only;
- 9 (3) "Emergency", [either:  
10 (a)] a sudden, unexpected occurrence, presenting a clear and imminent danger  
11 demanding immediate action to prevent or mitigate loss or damage to life, health, property, or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 essential public services. "Unexpected occurrence" includes, but is not limited to,  
13 thunderstorms, high winds, ice or snow storms, fires, floods, earthquakes, or other soil or  
14 geologic movements, riots, accidents, water or wastewater pipe breaks, vandalism, or sabotage[;  
15 or

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

18 (4) "Excavation", any operation in which earth, rock or other material in or on the ground  
19 is moved, removed or otherwise displaced by means of any tools, equipment or explosives and  
20 includes, without limitation, backfilling, grading, trenching, digging, ditching, **to include pulling**  
21 **material from the ditch onto a road**, drilling, well-drilling, augering, boring, tunneling,  
22 scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of  
23 structures, except that, the use of mechanized tools and equipment to break and remove  
24 pavement and masonry down only to the depth of such pavement or masonry[, the use of  
25 pressurized air to disintegrate and suction to remove earth, rock and other materials, the tilling  
26 of soil for agricultural or seeding purposes] **on roads dedicated to the public use for vehicular**  
27 **traffic**, and the installation of marking flags and stakes **that are not driven and the use of**  
28 **pressurized air to disintegrate and suction to remove earth, rock, or other materials** for the  
29 location of underground facilities [that are not driven] shall not be deemed excavation.  
30 Backfilling or moving earth on the ground in connection with other excavation operations at the  
31 same site shall not be deemed separate instances of excavation;

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

34 (6) "Marking", the use of paint, flags, stakes, or other clearly identifiable materials to  
35 show the field location of underground facilities, or the area of proposed excavation, in  
36 accordance with [the color code standard of the American Public Works Association. Unless  
37 otherwise provided by the American Public Works Association, the following color scheme shall  
38 be used: blue for potable water; purple for reclaimed water, irrigation and slurry lines; green for  
39 sewers and drain lines; red for electric, power lines, cables, conduit and lighting cables; orange  
40 for communications, including telephone, cable television, alarm or signal lines, cable or  
41 conduit; yellow for gas, oil, steam, petroleum or gaseous materials; white for proposed  
42 excavation; pink for temporary marking of construction project site features such as centerline  
43 and top of slope and toe of slope] **the marking standards for underground facilities as**  
44 **designated by The Missouri Common Ground Alliance Best Practices Manual;**

45 (7) "Notification center", a statewide organization operating twenty-four hours a day,  
46 three hundred sixty-five days a year on a not-for-profit basis, supported by [its participants, or  
47 by more than one operator of underground facilities, having as its principal purpose the statewide

48 receipt and dissemination to participating owners and operators of underground facilities of  
49 information concerning intended excavation activities in the area where such owners and  
50 operators have underground facilities, and open to participation by any and all such owners and  
51 operators on a fair and uniform basis. Such notification center shall be governed by a board of  
52 directors elected by the membership and composed of representatives from each general  
53 membership group, provided that one of the board members shall be a representative of the state  
54 highways and transportation commission so long as the commission is a participant in the  
55 notification center] **a majority of the underground facility owners in the state of Missouri;**

56 (8) "Notification center participant", an underground facility owner who is a member and  
57 participant in the notification center;

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

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

66 [(11)] **(10) "Pipeline facility" includes[, without limitation, new and existing pipe,**  
67 **rights-of-way, and any equipment, facility, or building used or intended for use in the**  
68 **transportation of gas or the treatment of gas, or used or intended for use in the transportation of**  
69 **hazardous liquids including petroleum, or petroleum products] all parts of a pipeline facility**  
70 **through which a hazardous liquid, or gas moves in transportation, including, but not**  
71 **limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units,**  
72 **fabricated assemblies associated with pumping units, metering and delivery stations and**  
73 **fabricated assemblies therein, and breakout tanks;**

74 **(11) "Positive response", the ability of the underground facility owner to designate**  
75 **the status of the locate request to the notification center who then makes that information**  
76 **available to the person making the locate request through electronic or other means;**

77 (12) ["Preengineered project", a project which is approved by an agency or political  
78 subdivision of the state and for which the agency or political subdivision responsible for the  
79 project, as part of its engineering and contract procedures, holds a meeting prior to the  
80 commencement of any construction work on such project and in such meeting all persons  
81 determined by the agency or political subdivision to have underground facilities located within  
82 the excavation area of the project are invited to attend and given an opportunity to verify or  
83 inform any agency or political subdivision of the location of their underground facilities, if any,

84 within the excavation area and where the location of all known underground facilities are duly  
85 located or noted on the engineering drawing as specifications for the project;

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

89 [(14)] (13) "Trenchless excavation", horizontal excavation parallel to the surface of the  
90 earth which does not use trenching or vertical digging as the primary means of excavation,  
91 including but not limited to directional boring, tunneling, or augering;

92 [(15)] (14) "Underground facility", any item of personal property which shall be buried  
93 or placed below ground for use in connection with the storage or conveyance of water, storm  
94 drainage, sewage, telecommunications service, cable television service, electricity, oil, gas,  
95 hazardous liquids or other substances, and shall include but not be limited to pipes, sewers,  
96 conduits, cables, valves, **vaults**, lines, wires, manholes, attachments, or appurtenances, and those  
97 portions of pylons or other supports below ground that are within any public or private street,  
98 road or alley, right-of-way dedicated to the public use or utility easement of record, or  
99 prescriptive easement. If gas distribution lines or electric lines, telecommunications facilities,  
100 cable television facilities, water service lines, water system, storm drainage or sewer system  
101 lines, other than those used for vehicular traffic control, lighting of streets and highways and  
102 communications for emergency response, are located on private property and are owned solely  
103 by the owner or owners of such private property, such lines or facilities receiving service shall  
104 not be considered underground facilities for purposes of this chapter, except at locations where  
105 they cross or lie within an easement or right-of-way dedicated to public use or owned by a person  
106 other than the owner of the private property. Water and sanitary sewer lines providing service  
107 to private property that are owned solely by the owner of such property shall not be considered  
108 underground facilities at any location[. Water, storm drainage, cross road drainage, or sewer  
109 lines owned by the state highways and transportation commission shall not be considered  
110 underground facilities at any location. For railroads regulated by the Federal Railroad  
111 Administration, "underground facility" as used in sections 319.015 to 319.050 shall not include  
112 any excavating done by a railroad when such excavating is done entirely on land which the  
113 railroad owns or on which the railroad operates, or in the event of emergency, on adjacent land];

114 [(16)] (15) "Underground facility owner", any person who owns or operates underground  
115 facilities [as defined by this section];

116 [(17)] (16) "Working day", every day, **between the hours of 6:00 a.m. and 6:00 p.m.**,  
117 except Saturday, Sunday or a legally declared [local,] state or federal holiday.

319.022. 1. Any person[, except a railroad regulated by the Federal Railroad  
2 Administration,] who installs or otherwise owns or operates an underground facility shall

3 become a participant in a notification center upon first acquiring or owning or operating such  
4 underground facility. [Except as provided in section 319.016, all owners and operators of  
5 underground facilities within the state shall maintain participation in a notification center.] **All  
6 underground facility owners within the state shall maintain participation in a notification  
7 center for the duration of owning and operating such underground facility.**

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

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

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

34         [5.] **3.** Excavators shall be informed of the availability of the list of notification center  
35 participants [required in subsection 3 of this section in the manner provided for in section  
36 319.024].

37 [6.] 4. An annual audit or review of the notification center shall be performed by a  
38 certified public accountant and a report of the findings submitted to the speaker of the house of  
39 representatives and the president pro tem of the senate.

40 **5. The notification center shall have the authority to determine:**

41 **(1) The maximum geographic area for which a single notice to excavate shall be**  
42 **valid;**

43 **(2) When more than one notice of intent to excavate shall be required of any**  
44 **person, including the method, the type, the number of notices; and**

45 **(3) The length of time a notice of intent to excavate shall be valid.**

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

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

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

24 (2) Either directly or through the notification center, notify excavators and the public in  
25 the vicinity of his or her underground pipeline facility of the availability of the notification center  
26 by including the information set out in subsection 1 of section 319.025 in notifications required

27 by the safety rules of the Missouri public service commission relating to its damage prevention  
28 program;

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

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

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

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

26 [4. If the owner or operator notifies the excavator that the area of excavation cannot be  
27 determined from the description provided by the excavator through the notice required by this  
28 section, the excavator shall provide clarification of the area of excavation by markings or by  
29 providing project plans to the owner or operator, or by meeting on the site of the excavation with  
30 representatives of the owner or operator as provided by subsection 1 of section 319.030.

31 5. Notwithstanding the provisions of this section to the contrary, a person shall not make  
32 or begin any excavation in any state highway, or on the right-of-way of any state highway,

33 without first obtaining a permit from the state highways and transportation commission pursuant  
34 to section 227.240, provided however, the provisions of this subsection shall not apply to  
35 railroad right-of-way owned or operated by a railroad.]

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

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

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

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

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

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

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

31 (6) A description of the site of excavation by approximate distance and direction from  
32 the nearest state or county road or city street or intersection of such roads or streets unless

33 previously provided under subdivision (5) of this subsection, and the proximity of the site to any  
34 prominent landmarks;

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

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

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

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

57 5. If in the course of excavation the person responsible for the excavation operations  
58 discovers that the owner or operator of the underground facility who is a participant in a  
59 notification center has incorrectly located the underground facility, he or she shall notify the  
60 notification center which shall inform the [notification center participant. If the owner or  
61 operator of the underground facility is not a participant in a notification center prior to the  
62 January 1, 2003, effective date for mandatory participation pursuant to section 319.022, the  
63 person responsible for the excavation shall notify the owner.] **underground facility owner. The  
64 underground facility owner shall respond to the incorrect locate notification within two  
65 hours of receipt of the notification by contacting the person responsible for the excavation  
66 or by correctly locating their underground facility. If a facility owner is unable to locate  
67 their underground facility, the facility owner shall remain on site until such time as their  
68 underground facility is locatable, or provide the excavator with a contact phone number,**

69 **during excavation in circumstances where conditions are present that has interfered with**  
70 **locating their facility.** The person responsible for maintaining records of the location of  
71 underground facilities for the notification center participant shall correct such records to show  
72 the actual location of such facilities, if current records are incorrect.

73         6. When markings have been provided in response to a notice of intent to excavate,  
74 excavators may commence or continue to work within the area described in the notice for a  
75 **defined time period designated by the notification center under subsection 5 of section**  
76 **319.022** so long as the markings are visible. **If an excavator is unable to begin the excavation**  
77 **within ten working days as described in the request the excavator shall make a relocate**  
78 **request before beginning the excavation.** If markings become unusable due to weather,  
79 construction or other cause, the excavator shall contact the notification center to request  
80 remarking. Such notice shall be given in the same manner as original notice of intent to  
81 excavate, and the owner or operator shall remark the site in the same manner, within the same  
82 time, as required in response to an original notice of intent to excavate. Each excavator shall  
83 exercise reasonable care not to unnecessarily disturb or obliterate markings provided for location  
84 of underground facilities. If remarking is required due to the excavator's failure to exercise  
85 reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even  
86 though the markings are visible and usable, the excavator may be liable to the owner or operator  
87 for the reasonable cost of such remarking. **Nothing in this section shall allow any person**  
88 **other than the facility owner or their representative to mark or relocate any underground**  
89 **facility.**

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

98         8. **In the event of any damage or dislocation or disturbance to any underground**  
99 **facility or any protective devices required to be reported by the excavator under subsection**  
100 **7 of this section, in advance of or during the excavation work, the person responsible for**  
101 **the excavation operations shall not conceal or attempt to conceal such damage or**  
102 **dislocation or disturbance, nor shall that person attempt to make repairs to the facility**  
103 **unless authorized by the underground facility owner. In the case of sewer lines or facilities,**  
104 **emergency temporary repairs may be made by the excavator after notification without the**

105 owners' or operators' authorization to prevent further damage to the facilities. Such  
106 emergency repairs shall not relieve the excavator of responsibility to make notification as  
107 required by subsection 7 of this section.

108 **9. No later than April first of each year, each underground facility owner who owns**  
109 **or operates electric, gas, or pipeline facilities, shall submit to a central repository**  
110 **designated by the notification center a report for the prior calendar year including, but not**  
111 **limited to, the number of damages it experienced to its facilities and the circumstances**  
112 **under which its facilities were damaged. All data submitted shall be aggregated and**  
113 **anonymous. Information provided by the underground facility owner specific to damage**  
114 **data submitted shall be accessible only to the underground facility owner unless otherwise**  
115 **designated by the underground facility owner.**

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

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

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

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

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

3 section from a person intending to commence an excavation, inform the excavator as promptly  
4 as practical, but not in excess of two working days[, unless otherwise mutually agreed,] of the  
5 approximate location of underground facilities in or near the area of the excavation so as to  
6 enable the person engaged in the excavation work to locate the facilities in advance of and during  
7 the excavation work, **provided that no excavation shall begin earlier than the scheduled**  
8 **excavation date provided on the locate request.** The two working days provided for notice  
9 in this subsection and subsection 1 of section 319.026, shall begin at [12:00] **6:00** a.m. following  
10 the receipt of the request by the notification center. [If the information available to the owner  
11 or operator of a pipeline facility or an underground electric or communications cable discloses  
12 that valves, vaults or other appurtenances are located in or near the area of excavation, the owner  
13 or operator shall either inform the excavator of the approximate location of such appurtenances  
14 at the same time and in the same manner as the approximate location of the remainder of the  
15 facility is provided, or shall at such time inform the excavator that appurtenances exist in the area  
16 and provide a telephone number through which the excavator may contact a representative of the  
17 owner or operator who will meet at the site within one working day after request from the  
18 excavator and at such meeting furnish the excavator with the available information about the  
19 location and nature of such appurtenances.] If the excavator states in the notice of intent to  
20 excavate that the excavation will involve trenchless technology, the owner or operator shall  
21 inform the excavator of the depth, to the best of his or her knowledge or ability, of the facility  
22 according to the records of the owner or operator. The owner or operator shall provide the  
23 approximate location of underground facilities by use of markings **as designated in section**  
24 **319.015.** [If flags or stakes are used, such marking shall be consistent with the color code and  
25 other standards for ground markings.] Persons representing the excavator and the owner or  
26 operator shall meet on the site of excavation within two working days of a request by either  
27 person for such meeting for the purpose of clarifying markings, or upon agreement of the  
28 excavator and owner or operator, such meeting may be an alternate means of providing the  
29 location of facilities by originally marking the approximate location of the facility at the time of  
30 the meeting. If upon receipt of a notice of intent to excavate, an owner or operator determines  
31 that he or she neither owns or operates underground facilities in or near the area of excavation,  
32 the owner or operator shall within two working days after receipt of the notice, inform the  
33 excavator that the owner or operator has no facilities located in the area of the proposed  
34 excavation. The owner or operator of the underground facility shall make notice to the excavator  
35 that no facilities are located in the area of excavation by contacting the excavator by any of the  
36 following methods:

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

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

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

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

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

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

46 If the only means of contacting the excavator is one or more telephone numbers provided by the  
47 excavator in the notice of excavation under section 319.026, then two attempts by the  
48 underground facility owner to contact the excavator at one of the telephone numbers provided  
49 shall constitute compliance with this subsection] **Use of a positive response system;**

50 (2) **By calling the primary number of the excavator or cellular telephone number**  
51 **of the responsible person or by leaving a message on a recording device of either. If the**  
52 **only means of contacting the excavator is by one or more telephone numbers provided by**  
53 **the excavator in the locate request, then two attempts using those numbers by the**  
54 **underground facility owner to contact the excavator shall constitute compliance with this**  
55 **subsection;**

56 (3) **By notifying the excavator by facsimile or electronic mail at the number or**  
57 **address provided by the excavator in the notice of excavation made under subsection 2 of**  
58 **section 319.026;**

59 (4) **By marking "clear" or "OK" at the site of excavation with the underground**  
60 **facility identifying initials; or**

61 (5) **By verbally informing the excavator in person.**

62 2. A record of the date and means of informing the excavator that no facilities were  
63 located by the owner or operator shall be included in the written records of the underground  
64 facility owner regarding each specific notice of excavation **and shall be retained for a period**  
65 **of one year.**

66 3. **If the owner or operator notifies the excavator that the area of excavation cannot**  
67 **be determined from the description provided by the excavator through the notice required**  
68 **by this section, the excavator shall provide clarification of the area of excavation by**  
69 **marking the area with white flags or white paint, or by providing project plans to the**  
70 **owner or operator, or by meeting on the site of the excavation with representatives of the**  
71 **owner or operator as provided for in this section.**

72           **4.** In the event that a person owning or operating an underground facility fails to comply  
73 with the provisions of subsection 1 of this section after notice given by an excavator in  
74 compliance with section 319.026, the excavator, prior to commencing the excavation, shall give  
75 a second notice to the notification center as required by section 319.026 stating that there has  
76 been no response to the original notice given under section 319.026. After the receipt of the  
77 notice stating there has been "no response", the owner or operator of an underground facility  
78 shall, within two hours of the receipt of such notice, mark its facilities or contact and inform the  
79 excavator of when the facilities will be marked; provided, however, that for "no response"  
80 notices made to the notification center by 2:00 p.m., the markings shall be completed on the  
81 working day the notice is made to the notification center, and provided that for "no response"  
82 notices made to the notification center after 2:00 p.m., the markings shall be completed no later  
83 than 10:00 a.m. on the next working day. If an underground facility owner fails to mark its  
84 facilities or contact the excavator as required by this subsection, the excavator may commence  
85 the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree  
86 of care in making the excavation as is otherwise required by law. **If no-response requests are**  
87 **made by an excavator even though the markings have been provided or the requests**  
88 **cleared, the excavator may be liable to the underground facility owner for the reasonable**  
89 **costs of such remarking.**

90           [4.] **5.** For purposes of this section, a period of two working days begins at [12:00] **6:00**  
91 a.m. following when the request is made.

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

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

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

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

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

16           3.] Any person who violates in any material respect the provisions of section 319.022,  
17 319.025, 319.026, [319.029,] 319.030, 319.037, or this section or who willfully damages an  
18 underground facility shall be liable to the state of Missouri for a civil penalty of up to ten  
19 thousand dollars for each violation for each day such violation persists, except that the maximum  
20 penalty for violation of the provisions of sections 319.010 to 319.050 shall not exceed five  
21 hundred thousand dollars for any related series of violations. An action to recover such civil  
22 penalty may be brought by the attorney general or a prosecuting attorney on behalf of the state  
23 of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court,  
24 which shall consider the nature, circumstances and gravity of the violation, and with respect to  
25 the person found to have committed the violation, the degree of culpability, the absence or  
26 existence of prior violations, whether the violation was a willful act, the effect on ability to  
27 continue to do business, any good faith in attempting to achieve compliance, ability to pay the  
28 penalty, and such other matters as justice may require in determining the amount of penalty  
29 imposed.

30           [4.] 2. The attorney general may bring an action in any appropriate circuit court of this  
31 state for equitable relief to redress or restrain a violation by any person of any provision of  
32 sections 319.010 to 319.050. The court may grant such relief as is necessary or appropriate,  
33 including mandatory or prohibitive injunctive relief, temporary or permanent.

34           **3. The attorney general shall make public the aggregate number of enforcement**  
35 **actions for the previously completed calendar year, prior to March thirty-first of the**  
36 **current year.**

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

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

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

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

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

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

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

11 2. Once the notification center has an inaccuracy rate of fifteen percent  
12 or higher for any owner or operator of underground facilities, then any such  
13 owner or operator may withdraw from participation in the notification center by  
14 providing written notice to the notification center of its withdrawal. The owner  
15 or operator shall then file with the recorder of deeds for each county it has  
16 underground facilities a statement that it has underground facilities and a name  
17 and phone number of a contact person that excavators shall contact and notify of  
18 its intent to excavate. The owner or operator shall also publish, at least quarterly,  
19 in a newspaper or other publication of general circulation in counties that have  
20 underground facilities a statement that the owner or operator has underground  
facilities and who the excavator shall contact regarding its intent to excavate.

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

2           [319.029. Notwithstanding the fact that a project is a preengineered  
3 project or a permitted project, or that a design request was previously made,  
4 excavators connected therewith shall be required to give notification in  
5 accordance with sections 319.025 and 319.026 prior to commencement of  
6 excavation.]

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

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

2           [319.042. Notwithstanding any provision of law to the contrary, nothing  
3 in this chapter shall abrogate any contractual provisions entered into between any  
4 railroad and any other party owning or operating an underground facility within  
5 the railroad's right-of-way. For railroads regulated by the Federal Railroad  
6 Administration, sections 319.015 to 319.050 shall not include any underground  
7 facility owned or operated by a railroad on land which the railroad owns or any  
8 excavation done by a railroad when such excavation is done entirely on land  
which the railroad owns.]

Section B. This act shall become effective January 1, 2014.

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