

SECOND REGULAR SESSION

# HOUSE BILL NO. 2329

## 102ND GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE BUCHHEIT-COURTWAY.

4226H.02I

DANA RADEMAN MILLER, Chief Clerk

---

### 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, with penalty provisions.

---

*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Section A. Sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 2 319.031, and 319.035, RSMo, are repealed and eleven new sections enacted in lieu thereof, to 3 be known as sections 319.015, 319.019, 319.022, 319.024, 319.025, 319.026, 319.027, 4 319.030, 319.031, 319.034, and 319.035, 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 3 underground facility plus two feet on either side thereof. In situations where reinforced 4 concrete, multiplicity of adjacent facilities or other unusual specified conditions interfere with 5 location attempts, the owner or operator shall designate to the best of his, [ø] her, or its 6 ability an approximate location of greater width;

7 (2) **"Best practices", the Common Ground Alliance Best Practices for protecting** 8 **vital underground facilities, sponsored by the Department of Transportation as** 9 **described in 49 U.S.C. Section 6105(a), as amended. The Common Ground Alliance** 10 **Best Practices shall be read in conjunction with Missouri law; in any instance in which** 11 **such best practices conflict with state law, state law shall control;**

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

13 (4) "Design request", a request from any person for facility location information for 14 design purposes only;

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.

15           **(5) "Detectible underground location device", any device that is installed**  
16 **underground and that is capable of being detected from above ground with an electronic**  
17 **locating device, including a:**

18           **(a) "Locator strip", a type of detectible underground location device that**  
19 **consists of a plastic or other durable material ribbon containing a material capable of**  
20 **being detected from above ground with an electronic locating device and color coded by**  
21 **type of underground facility; or**

22           **(b) "Locator wire", a type of detectible underground location device that**  
23 **consists of a copper wire or metallic, conductive, noncorrosive trace wire capable of**  
24 **being detected from above ground with an electronic locating device;**

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

29           ~~[(3)]~~ **(7) "Emergency", a sudden, unexpected occurrence, presenting a clear and**  
30 **imminent danger demanding immediate action to prevent or mitigate loss or damage to life,**  
31 **health, property, or essential public services. "Unexpected occurrence" includes, but is not**  
32 **limited to, thunderstorms, high winds, ice or snow storms, fires, floods, earthquakes, or other**  
33 **soil or geologic movements, riots, accidents, water or wastewater pipe breaks, vandalism, or**  
34 **sabotage;**

35           ~~[(4)]~~ **(8) "Excavation", any operation in which earth, rock or other material in or on**  
36 **the ground is moved, removed or otherwise displaced by means of any tools, equipment or**  
37 **explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching,**  
38 **pulling material from a ditch but not including routine road maintenance, drilling, well-**  
39 **drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in,**  
40 **ripping, driving, and demolition of structures, except that, the use of mechanized tools and**  
41 **equipment to break and remove pavement and masonry down only to the depth of such**  
42 **pavement or masonry on roads dedicated to the public use for vehicular traffic, the tilling of**  
43 **soil for agricultural purposes when such excavation does not exceed sixteen inches in depth,**  
44 **the installation of marking flags and stakes and the use of pressurized air to disintegrate and**  
45 **suction to remove earth, rock, or other materials for the location of underground facilities**  
46 **shall not be deemed excavation. Backfilling or moving earth on the ground in connection**  
47 **with other excavation operations at the same site shall not be deemed separate instances of**  
48 **excavation. For railroads regulated by the Federal Railroad Administration, "excavation"**  
49 **shall not include any excavating done by a railroad when such excavating is done entirely on**  
50 **land that the railroad owns or on which the railroad operates, or in the event of an emergency,**  
51 **excavating done by a railroad on adjacent land;**

52           ~~[(5)]~~ (9) "Excavator", any person making one or more excavations who is required to  
53 make notices of excavation under the requirements of sections 319.010 to 319.050;

54           ~~[(6)]~~ (10) "Locate status", the underground facility owner's designation of the status  
55 of the locate request to the notification center which then makes that information available to  
56 the person making the locate request through electronic or other means;

57           ~~[(7)]~~ (11) "Marking", the use of paint, flags, stakes, or other clearly identifiable  
58 materials to show the field location of underground facilities, or the area of proposed  
59 excavation, in accordance with the marking standards for underground facilities as designated  
60 by the Common Ground Alliance Best Practices Version 10.0 except that "approximate  
61 location" shall comply with the requirements as set forth in subdivision (1) of this section;

62           ~~[(8)]~~ (12) "Notification center", a statewide organization operating twenty-four hours  
63 a day, three hundred sixty-five days a year on a not-for-profit basis, supported by a majority  
64 of the underground facility owners in the state of Missouri;

65           ~~[(9)]~~ (13) "Notification center participant", an underground facility owner who is a  
66 member and participant in the notification center;

67           ~~[(10)]~~ (14) "Permitted project", a project for which a permit for the work to be  
68 performed is required to be issued by a local, state or federal agency and, as a prerequisite to  
69 receiving such permit, the applicant is required to notify all underground facility owners in  
70 the area of the work for purposes of identifying the location of existing underground facilities;

71           ~~[(11)]~~ (15) "Person", any individual, firm, joint venture, partnership, corporation,  
72 association, cooperative, municipality, political subdivision, governmental unit, department or  
73 agency and shall include a notification center and any trustee, receiver, assignee or personal  
74 representative thereof;

75           ~~[(12)]~~ (16) "Pipeline facility" includes all parts of a facility through which a  
76 hazardous liquid or gas moves in transportation including, but not limited to, pipe, valves and  
77 other appurtenances connected to pipe, pumping units, fabricated assemblies associated with  
78 pumping units, metering and delivery stations and fabricated assemblies therein, and breakout  
79 tanks;

80           (17) **"Reasonable care", includes compliance with Common Ground Alliance**  
81 **Best Practices;**

82           ~~[(13)]~~ (18) "State plane coordinates", a system of locating a point on a flat plane  
83 developed by the National Oceanic and Atmospheric Administration and utilized by state  
84 agencies, local governments, and other persons to designate the site of a construction project;

85           ~~[(14)]~~ (19) "Trenchless excavation", horizontal excavation parallel to the surface of  
86 the earth which does not use trenching or vertical digging as the primary means of excavation,  
87 including but not limited to directional boring, tunneling, or augering;

88           ~~[(15)]~~ **(20)** "Underground facility", any item of personal property which shall be  
89 buried or placed below ground for use in connection with the storage or conveyance of water,  
90 storm drainage, sewage, telecommunications **and broadband** service, cable television  
91 service, electricity, oil, gas, hazardous liquids or other substances, and shall include but not be  
92 limited to pipes, sewers, conduits, cables, valves, vaults, lines, wires, manholes, attachments,  
93 or appurtenances, and those portions of pylons or other supports below ground that are within  
94 any public or private street, road or alley, right-of-way dedicated to the public use or utility  
95 easement of record, or prescriptive easement. If gas distribution lines or electric lines,  
96 telecommunications **and broadband** facilities, cable television facilities, water service lines,  
97 water system, storm drainage or sewer system lines, other than those used for vehicular traffic  
98 control, lighting of streets and highways and communications for emergency response, are  
99 located on private property and are owned solely by the owner or owners of such private  
100 property, such lines or facilities receiving service shall not be considered underground  
101 facilities for purposes of this chapter, except at locations where they cross or lie within an  
102 easement or right-of-way dedicated to public use or owned by a person other than the owner  
103 of the private property. Water and sanitary sewer lines providing service to private property  
104 that are owned solely by the owner of such property shall not be considered underground  
105 facilities at any location. A structure that transports only storm water drainage under  
106 roadways, driveways, or railways shall not be considered an underground facility;

107           ~~[(16)]~~ **(21)** "Underground facility owner", any person who owns or operates  
108 underground facilities;

109           ~~[(17)]~~ **(22)** "Working day", every day, except Saturday, Sunday or a legally declared  
110 state or federal holiday.

**319.019. The facility owner shall ensure that all new and active underground  
2 facilities installed in any real property after August 28, 2024, shall be installed with a  
3 detectible underground location device unless the facility is capable of being detected  
4 from above ground with an electronic locating device.**

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. All underground facility owners within the state shall maintain  
5 participation in a notification center for the duration of owning and operating such  
6 underground facility.

7           **2.** Such notification center shall be governed by a board of directors elected by the  
8 membership and composed of representatives from the general membership group.

9           ~~[2-]~~ **3.** The notification center shall maintain in its offices and make available to any  
10 notification center participant or excavator upon request a current list of the names and

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

15 ~~[3-]~~ 4. Excavators shall be informed of the availability of the list of notification center  
16 participants.

17 ~~[4-]~~ 5. An annual audit or review of the notification center shall be performed by a  
18 certified public accountant and a report of the findings submitted to the speaker of the house  
19 of representatives and the president pro tem of the senate.

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  
5 the public and excavators of the means of obtaining such information may, but need not,  
6 include advertising, including advertising in periodicals of general circulation or trade  
7 publications, information provided to professional or trade associations which routinely  
8 provide information to excavators or design professionals, or sponsoring meetings of  
9 excavators and design professionals for such purposes. Information provided by the  
10 notification center on behalf of persons owning or operating an underground facility shall be  
11 deemed in compliance with this section by such persons.

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

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

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

27 (3) Notify excavators annually who give notice of their intent to excavate of the type  
28 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 2 319.050, ~~[a person]~~ **an excavator** shall not make or begin any excavation in any public street, 3 road or alley, right-of-way dedicated to the public use or utility easement of record or within 4 any private street or private property ~~[without first giving]~~ **until such excavator gives** notice 5 to the notification center and ~~[obtaining]~~ **obtains** information concerning the possible 6 location of any underground facilities which may be affected by said excavation from 7 underground facility owners whose names appear on the current list of participants in the 8 notification center and who were communicated to the excavator as notification center 9 participants who would be informed of the excavation notice. Notice to the notification 10 center of proposed excavation shall be deemed notice to all owners and operators of 11 underground facilities. The notice referred to in this section shall comply with the provisions 12 of section 319.026.

13 2. An excavator's notice to owners and operators of underground facilities 14 participating in the notification center pursuant to section 319.022 is ineffective for 15 purposes of subsection 1 of this section unless given to such notification center.

16 3. Notification center participants shall be relieved of the responsibility to respond to 17 a notice of intent to excavate received directly from the person intending to commence an 18 excavation, except for requests for clarification of markings through on-site meetings as 19 provided in subsection 1 of section 319.030 and requests for locations at the time of an 20 emergency as provided by section 319.050.

21 4. Notwithstanding the provisions of this section to the contrary, a person shall not 22 make or begin any excavation in any state highway, or on the right-of-way of any state 23 highway, without first obtaining a permit from the state highways and transportation 24 commission pursuant to section 227.240, provided however, the provisions of this subsection 25 shall not apply to 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- 3 week basis ~~[or by facsimile]~~ or by completing notice via the internet at least two working 4 days, but not more than ten working days, before the expected date of commencing the 5 excavation activity. The notification center receiving such notice shall inform the excavator 6 of all notification center participants to whom such notice will be transmitted and shall 7 promptly transmit all details of such notice provided under subsection 2 of this section to 8 every notification center participant in the area of excavation.

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

11 (1) The name and telephone number of the person filing the notice of excavation, if 12 the telephone number is different than that of the excavator, and the name, address, **and**

13 telephone number of the excavator [~~and whether the excavator's telephone is equipped with a~~  
14 ~~recording 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,  
17 and the type of excavation being planned, including whether the excavation involves  
18 trenchless excavation;

19 (3) The [~~facsimile number,~~] email address[~~;~~] and cellular telephone number of the  
20 excavator, 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  
24 notice shall also state the same information for that person;

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

41 **3. When the location of the planned excavation cannot be clearly identified solely**  
42 **by the means described in subdivision (5) of subsection 2 of this section, the excavator**  
43 **may also designate the planned excavation route or area to be excavated by physical**  
44 **white lining using white paint, stakes, whiskers, or other similar markings on and along**  
45 **the area to be excavated, or by electronic white lining when available through the**  
46 **notification center. Such information may be provided to the notification center prior to**  
47 **or with the notification required under this section.**

48 **4.** The notification center receiving such notice shall solicit all information required  
49 by subsection 2 of this section and shall require the excavator to provide all such information

50 before notice by the excavator is deemed to be completed pursuant to sections 319.015 to  
51 319.050. The notification center shall transmit all details of such notice as required by this  
52 section.

53 ~~[4.]~~ 5. A record of each notice of intent to excavate shall be maintained by the  
54 notification center for a period of five years. The record shall include the date the notice was  
55 received and all information required by subsection 2 of this section which was provided by  
56 the excavator and a record of the underground facility owners notified by the notification  
57 center. If the notification center creates a record of the notice by telephonic recording, such  
58 record of the original notice shall be maintained for one year from the date of receipt.  
59 Records of notices to excavate maintained by the notification center in electronic form shall  
60 be deemed to be records under this subsection. Persons holding records of notices of intent to  
61 excavate and records of information provided to the excavator by the notification center or  
62 owner or operator of the facility shall make copies of such records available for a reasonable  
63 copying fee upon the request of the owner or operator of the underground facilities or the  
64 excavator filing the notice.

65 ~~[5.]~~ 6. If in the course of excavation the person responsible for the excavation  
66 operations discovers that the owner or operator of the underground facility who is a  
67 participant in a notification center has incorrectly located the underground facility, **or if the**  
68 **discovery of an underground facility is not marked**, he or she shall notify the notification  
69 center which shall inform the underground facility owner. The underground facility owner  
70 shall respond to the incorrect locate notification within two hours of receipt of the notification  
71 by contacting the person responsible for the excavation or by correctly locating their  
72 underground facility. The person responsible for maintaining records of the location of  
73 underground facilities for the notification center participant shall correct such records to show  
74 the actual location of such facilities, if current records are incorrect.

75 ~~[6.]~~ 7. When markings have been provided in response to a notice of intent to  
76 excavate, excavators may commence or continue to work within the area described in the  
77 notice for so long as the markings are visible. If an excavator is unable to begin the  
78 excavation within ten working days as described in the request, the excavator shall make a  
79 relocate request before beginning the excavation. If markings become unusable due to  
80 weather, construction or other cause, the excavator shall contact the notification center to  
81 request remarking. Such notice shall be given in the same manner as original notice of intent  
82 to excavate, and the owner or operator shall remark the site in the same manner, within the  
83 same time, as required in response to an original notice of intent to excavate. Each excavator  
84 shall exercise reasonable care not to unnecessarily disturb or obliterate markings provided for  
85 location of underground facilities. If remarking is required due to the excavator's failure to  
86 exercise reasonable care, or if repeated unnecessary requests for remarking are made by an



87 excavator even though the markings are visible and usable, the excavator may be liable to the  
88 owner or operator for the reasonable cost of such remarking. Nothing in this section shall  
89 allow any person other than the facility owner or their representative to mark or relocate any  
90 underground facility.

91 ~~[7-]~~ **8.** Before commencing excavation, the excavator shall determine best practices  
92 for confirming the horizontal and vertical location of facilities at the site of excavation  
93 considering conditions at the site including geology, access to the site, and the presence of  
94 paved surfaces. Hand digging or soft digging shall be used as a best practice when possible.

95 ~~[8-]~~ **9.** In the event of any damage, dislocation, or disturbance of any underground  
96 facility in connection with any excavation, the person responsible for the excavation  
97 operations shall notify the notification center. This subsection shall be deemed to require  
98 reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode  
99 protection, permanent above-ground stakes, or other such items utilized for protection of the  
100 underground facility. **The notification center shall promptly notify the owner of the**  
101 **underground facility of such damage, dislocation, or disturbance.** The excavator shall  
102 immediately contact 911 when any damage or contact with a pipeline results in a release from  
103 the pipeline of hazardous liquid or gas to occur.

104 **10. The owner of the underground facility shall, within sixty days of the earlier**  
105 **of receipt of notice as required under subsection 9 of this section or actual notice by**  
106 **other means of an incident involving damage, dislocation, or disturbance of the**  
107 **underground facility, submit a report of the incident to the notification center and the**  
108 **excavator which includes the following:**

109 **(1) A description of the incident, including whether it resulted in real or personal**  
110 **property damage, personal injury, or death;**

111 **(2) A description of the damage to the underground facility;**

112 **(3) The actual or estimated cost to repair the damaged facility or other property;**

113 **and**

114 **(4) An intent to assert a claim against the excavator.**

115

116 **If any of the information required in the incident report is not known or reasonably**  
117 **available to the facility owner, such information shall be reported by the facility owner**  
118 **to the notification center within sixty days of the submission of the initial report. Except**  
119 **for information subject to protection by an individual privacy interest as determined by**  
120 **the notification center, any information contained in the incident report shall be**  
121 **available for public inquiry. The notification center shall maintain a database of**  
122 **incident reports and each incident report shall be maintained by the notification center**  
123 **for a minimum of five years. It shall be a continuing obligation of the underground**

124 **facility owner to submit incident reports when an incident occurs. If an underground**  
125 **facility owner fails to timely submit an incident report in accordance with this**  
126 **subsection, the owner shall be subject to a fine imposed by the attorney general under**  
127 **the authority of section 319.045, not to exceed two hundred fifty dollars per day until**  
128 **such incident report is filed and not to exceed five thousand dollars in the aggregate.**  
129 **The filing of an incident report shall be a condition precedent to the right of a facility**  
130 **owner to file and maintain a lawsuit for damages against an excavator as a result of a**  
131 **violation of sections 319.015 to 319.050.**

132 ~~[9-]~~ **11.** In the event of any damage, dislocation, or disturbance to any underground  
133 facility or any protective devices required to be reported by the excavator under subsection  
134 ~~[8]~~ **9** of this section in advance of or during the excavation work, the person responsible for  
135 the excavation operations shall not conceal or attempt to conceal such damage, dislocation, or  
136 disturbance, nor shall that person attempt to make repairs to the facility unless authorized by  
137 the underground facility owner. In the case of sewer lines or facilities, emergency temporary  
138 repairs may be made by the excavator after notification without the owners' or operators'  
139 authorization to prevent further damage to the facilities. Such emergency repairs shall not  
140 relieve the excavator of responsibility to make notification as required by subsection ~~[8]~~ **9** of  
141 this section.

142 ~~[10-]~~ **12.** No later than April ~~[1, 2015, and]~~ **first of** each year ~~[thereafter]~~, each  
143 underground facility owner who owns or operates electric, gas, or pipeline facilities shall  
144 submit to a central repository designated by the notification center a report of damages  
145 experienced by its facilities for the prior calendar year. The notification center shall  
146 determine the minimum information to be reported. All data submitted shall be aggregated  
147 and anonymous. Information provided by the underground facility owner specific to damage  
148 data submitted shall be accessible only to the underground facility owner unless otherwise  
149 designated by the underground facility owner.

150 **13. In the event of any damage, dislocation, or disturbance to any underground**  
151 **facility or any protective devices required to be reported by the excavator under**  
152 **subsection 9 of this section in advance of or during the excavation work, the person**  
153 **responsible for the excavation operations shall report the occurrence through the**  
154 **Damage Information Reporting Tool (DIRT) sponsored by the Common Ground**  
155 **Alliance and in accordance with best practices.**

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

6           2. Design requests shall be made to the notification center at least five working days[  
7 ~~but 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  
11 appropriate 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  
14 after the date the notice was received from the notification center. If the person making the  
15 request was contacted as an alternative to marking location, the person and the underground  
16 facility owner shall mutually agree on a schedule and method for providing the information,  
17 provided that the facility shall be marked within five working days if the facility owner and  
18 the person making the request are unable to agree.

19           4. No excavation may be commenced based upon information received through a  
20 design 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  
23 may be affected.

319.030. 1. Every person owning or operating an underground facility to whom  
2 notice of intent to excavate is required to be given shall, upon receipt of such notice as  
3 provided in this section from a person intending to commence an excavation, inform the  
4 excavator as promptly as practical, but not in excess of two working days, unless the  
5 excavator agrees to extend the start date and time provided in the locate request through  
6 methods established by the notification center, of the approximate location of underground  
7 facilities in or near the area of the excavation so as to enable the person engaged in the  
8 excavation work to locate the facilities in advance of and during the excavation work,  
9 provided that no excavation shall begin earlier than the scheduled excavation date provided  
10 on the locate request unless the excavator has confirmed that all underground facilities have  
11 been located. The two working days provided for notice in this subsection and subsection 1  
12 of section 319.026 shall begin at 12:00 a.m. following the receipt of the request by the  
13 notification center. Each underground facility owner receiving notifications from the  
14 notification center by use of the internet shall, after December 31, 2014, use the locate status  
15 system provided by the notification center. Those underground facility owners that do not  
16 receive notifications by use of the internet shall, no later than January 1, 2016, provide locate  
17 status to the notification center by an alternate method provided by the notification center. If  
18 the excavator states in the notice of intent to excavate that the excavation will involve  
19 trenchless technology, the owner or operator shall inform the excavator of the depth, to the

20 best of his, ~~her~~, **or its** knowledge or ability, of the facility according to the records of the  
21 owner or operator. The owner or operator shall provide the approximate location of  
22 underground facilities by use of markings as designated in section 319.015. Persons  
23 representing the excavator and the owner or operator shall meet on the site of excavation  
24 within two working days of a request by either person for such meeting for the purpose of  
25 clarifying markings, or upon agreement of the excavator and owner or operator, such meeting  
26 may be an alternate means of providing the location of facilities by originally marking the  
27 approximate location of the facility at the time of the meeting. If upon receipt of a notice of  
28 intent to excavate, an owner or operator determines that he or she neither owns or operates  
29 underground facilities in or near the area of excavation, the owner or operator shall within  
30 two working days after receipt of the notice, inform the excavator that the owner or operator  
31 has no facilities located in the area of the proposed excavation. The owner or operator of the  
32 underground facility shall make notice to the excavator that no facilities are located in the  
33 area of excavation by contacting the excavator by any of the following methods:

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

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

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

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

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

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

44

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

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

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

54 3. If the owner or operator notifies the excavator that the area of excavation cannot be  
55 determined from the description provided by the excavator through the notice required by this  
56 section, the excavator shall provide clarification of the area of excavation by marking the area

57 with white flags or white paint, or by providing project plans to the owner or operator, or by  
58 meeting on the site of the excavation with representatives of the owner or operator as  
59 provided for in this section.

60 4. In the event that a person owning or operating an underground facility fails to  
61 comply with the provisions of subsection 1 of this section after notice given by an excavator  
62 in compliance with section 319.026, the excavator, prior to commencing the excavation, shall  
63 give a second notice to the notification center as required by section 319.026 stating that there  
64 has been no response to the original notice given under section 319.026. After the receipt of  
65 the notice stating there has been "no response", the owner or operator of an underground  
66 facility shall, within two hours of the receipt of such notice, mark its facilities or contact and  
67 inform the excavator of when the facilities will be marked; provided, however, that for "no  
68 response" notices made to the notification center by 2:00 p.m., the markings shall be  
69 completed on the working day the notice is made to the notification center, and provided that  
70 for "no response" notices made to the notification center after 2:00 p.m., the markings shall be  
71 completed no later than 10:00 a.m. on the next working day. If an underground facility owner  
72 fails to mark its facilities or contact the excavator as required by this subsection, the excavator  
73 may commence the excavation. Nothing in this subsection shall excuse the excavator from  
74 exercising the degree of care in making the excavation as is otherwise required by law.

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

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

6 2. If the sewer system owner determines that sewer service connections exist in the  
7 area of the excavation identified in a notice of intent to excavate, the owner shall provide his,  
8 ~~or~~ her, or its best available information, or notice that the information does not exist,  
9 regarding the location of such connections to the excavator by any of the following methods:

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

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

13 (3) Delivering copies of the information to the excavator by ~~facsimile or by~~ other  
14 agreed upon means; or

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

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

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

**319.034. 1. For purposes of sections 319.010 to 319.050, the location of  
2 underground facilities provided by a facility owner or operator in accordance with such  
3 sections to any person engaging in scheduled excavating shall be accurate. If any  
4 underground facility becomes damaged by an excavator due to the furnishing of  
5 inaccurate information as to its location by the facility owner or operator, the excavator  
6 shall not be subject to any liability resulting from damage to the underground facility as  
7 a result of the excavating, provided that such person engaging in scheduled excavating  
8 complies with the requirements of sections 319.010 to 319.050 with respect to such  
9 excavation and there is no evidence visible and obvious to the excavator of the presence  
10 of a mismarked underground facility.**

11           **2. Upon documented evidence that the person seeking information as to the  
12 location of underground facilities has incurred losses or expenses due to inaccurate  
13 information, lack of information, or unreasonable delays in supplying information by  
14 the facility owners or operators, such facility owners or operators shall be liable to such  
15 person for any losses or expenses.**

319.035. 1. Obtaining information as required by sections 319.010 to 319.050 does  
2 not 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 in  
8 the event that such failure shall cause injury, loss, or damage. In addition to any penalties  
9 provided herein, liability under common law may apply]~~ **In addition to any fines or  
10 penalties payable to the state as provided in sections 319.010 to 309.050, a person  
11 injured by the negligence of an excavator or an underground facility owner or operator  
12 may recover any proximately caused damages allowed under the common law.**

13           4. The failure of an underground facility owner **or a locator or other contractor**  
14 **engaged by the facility owner** to mark ~~[his or her]~~ **the facility owner's** facilities that are  
15 located in an area of excavation described in a notice of intent to excavate received by the  
16 underground facility owner, as required by section 319.030, or the failure of an underground  
17 facility owner to be a notification center participant, consistent with the provisions of section  
18 319.022, shall be a rebuttable presumption of negligence on the part of such owner, **and of**  
19 **the locator or other contractor engaged by the facility owner**, in the event that such failure  
20 shall cause injury, loss, or damage. In addition to any penalties provided herein, liability  
21 under common law may apply.

22           **5. The failure of any excavator to give notice of proposed excavation activities as**  
23 **required under sections 319.010 to 319.050 shall be a rebuttable presumption of**  
24 **negligence on the part of the excavator in the event that such failure causes injury, loss,**  
25 **or damage.**

26           **6. If a court finds in any civil action commenced under sections 319.010 to**  
27 **319.050 that a cause of action was initiated or a defense was asserted frivolously and in**  
28 **bad faith, the court may require the party who initiated such cause or asserted such**  
29 **defense to pay the other party named in such action reasonable expenses and attorney's**  
30 **fees incurred to oppose such cause or defense.**

✓