

SENATE BILL NO. 1315

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

5099S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, and to enact in lieu thereof eleven new sections relating to underground facilities, 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,
2 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, are
3 repealed and eleven new sections enacted in lieu thereof, to be
4 known as sections 319.015, 319.019, 319.022, 319.024, 319.025,
5 319.026, 319.027, 319.030, 319.031, 319.034, and 319.035, to
6 read as follows:

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

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

11 (2) "Best practices", the Common Ground Alliance Best
12 Practices for protecting vital underground facilities,
13 sponsored by the Department of Transportation as described
14 in 49 U.S.C. Section 6105(a), as amended. The Common Ground

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

15 Alliance Best Practices shall be read in conjunction with
16 Missouri law; in any instance in which such best practices
17 conflict with state law, state law shall control;

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

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

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

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

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

40 [(4)] (8) "Excavation", any operation in which earth,
41 rock or other material in or on the ground is moved, removed
42 or otherwise displaced by means of any tools, equipment or
43 explosives and includes, without limitation, backfilling,
44 grading, trenching, digging, ditching, pulling material from
45 a ditch but not including routine road maintenance,
46 drilling, well-drilling, augering, boring, tunneling,

47 scraping, cable or pipe plowing, plowing-in, pulling-in,
48 ripping, driving, and demolition of structures, except that,
49 the use of mechanized tools and equipment to break and
50 remove pavement and masonry down only to the depth of such
51 pavement or masonry on roads dedicated to the public use for
52 vehicular traffic, the tilling of soil for agricultural
53 purposes when such excavation does not exceed sixteen inches
54 in depth, the installation of marking flags and stakes and
55 the use of pressurized air to disintegrate and suction to
56 remove earth, rock, or other materials for the location of
57 underground facilities shall not be deemed excavation.

58 Backfilling or moving earth on the ground in connection with
59 other excavation operations at the same site shall not be
60 deemed separate instances of excavation. For railroads
61 regulated by the Federal Railroad Administration,
62 "excavation" shall not include any excavating done by a
63 railroad when such excavating is done entirely on land that
64 the railroad owns or on which the railroad operates, or in
65 the event of an emergency, excavating done by a railroad on
66 adjacent land;

67 [(5)] (9) "Excavator", any person making one or more
68 excavations who is required to make notices of excavation
69 under the requirements of sections 319.010 to 319.050;

70 [(6)] (10) "Locate status", the underground facility
71 owner's designation of the status of the locate request to
72 the notification center which then makes that information
73 available to the person making the locate request through
74 electronic or other means;

75 (11) "Locator strip", a type of detectible underground
76 location device that consists of a plastic or other durable
77 material ribbon containing a material capable of being

78 detected from above ground with an electronic locating
79 device and color coded by type of underground facility;

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

85 [(7)] (13) "Marking", the use of paint, flags, stakes,
86 or other clearly identifiable materials to show the field
87 location of underground facilities, or the area of proposed
88 excavation, in accordance with the marking standards for
89 underground facilities as designated by the Common Ground
90 Alliance Best Practices Version 10.0 except that
91 "approximate location" shall comply with the requirements as
92 set forth in subdivision (1) of this section;

93 [(8)] (14) "Notification center", a statewide
94 organization operating twenty-four hours a day, three
95 hundred sixty-five days a year on a not-for-profit basis,
96 supported by a majority of the underground facility owners
97 in the state of Missouri;

98 [(9)] (15) "Notification center participant", an
99 underground facility owner who is a member and participant
100 in the notification center;

101 [(10)] (16) "Permitted project", a project for which a
102 permit for the work to be performed is required to be issued
103 by a local, state or federal agency and, as a prerequisite
104 to receiving such permit, the applicant is required to
105 notify all underground facility owners in the area of the
106 work for purposes of identifying the location of existing
107 underground facilities;

108 [(11)] (17) "Person", any individual, firm, joint
109 venture, partnership, corporation, association, cooperative,

110 municipality, political subdivision, governmental unit,
111 department or agency and shall include a notification center
112 and any trustee, receiver, assignee or personal
113 representative thereof;

114 [(12)] (18) "Pipeline facility" includes all parts of
115 a facility through which a hazardous liquid or gas moves in
116 transportation including, but not limited to, pipe, valves
117 and other appurtenances connected to pipe, pumping units,
118 fabricated assemblies associated with pumping units,
119 metering and delivery stations and fabricated assemblies
120 therein, and breakout tanks;

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

123 [(13)] (20) "State plane coordinates", a system of
124 locating a point on a flat plane developed by the National
125 Oceanic and Atmospheric Administration and utilized by state
126 agencies, local governments, and other persons to designate
127 the site of a construction project;

128 [(14)] (21) "Trenchless excavation", horizontal
129 excavation parallel to the surface of the earth which does
130 not use trenching or vertical digging as the primary means
131 of excavation, including but not limited to directional
132 boring, tunneling, or augering;

133 [(15)] (22) "Underground facility", any item of
134 personal property which shall be buried or placed below
135 ground for use in connection with the storage or conveyance
136 of water, storm drainage, sewage, telecommunications **and**
137 **broadband** service, cable television service, electricity,
138 oil, gas, hazardous liquids or other substances, and shall
139 include but not be limited to pipes, sewers, conduits,
140 cables, valves, vaults, lines, wires, manholes, attachments,
141 or appurtenances, and those portions of pylons or other

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

164 [(16)] (23) "Underground facility owner", any person
165 who owns or operates underground facilities;

166 [(17)] (24) "Working day", every day, except Saturday,
167 Sunday or a legally declared state or federal holiday.

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

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

9 2. Such notification center shall be governed by a
10 board of directors elected by the membership and composed of
11 representatives from the general membership group.

12 [2.] 3. The notification center shall maintain in its
13 offices and make available to any notification center
14 participant or excavator upon request a current list of the
15 names and addresses of each notification center participant,
16 including the county or counties wherein each participant
17 has underground facilities. The notification center may
18 charge a reasonable fee to notification center participants
19 or excavators requesting such list as is necessary to
20 recover the actual costs of printing and mailing.

21 [3.] 4. Excavators shall be informed of the
22 availability of the list of notification center participants.

23 [4.] 5. An annual audit or review of the notification
24 center shall be performed by a certified public accountant
25 and a report of the findings submitted to the speaker of the
26 house of representatives and the president pro tem of the
27 senate.

319.024. 1. Every person owning or operating an
2 underground facility shall assist excavators and the general
3 public in determining the location of underground facilities
4 before excavation activities are begun or as may be required
5 by subsection 6 of section 319.026 or subsection 1 of

6 section 319.030 after an excavation has commenced. Methods
7 of informing the public and excavators of the means of
8 obtaining such information may, but need not, include
9 advertising, including advertising in periodicals of general
10 circulation or trade publications, information provided to
11 professional or trade associations which routinely provide
12 information to excavators or design professionals, or
13 sponsoring meetings of excavators and design professionals
14 for such purposes. Information provided by the notification
15 center on behalf of persons owning or operating an
16 underground facility shall be deemed in compliance with this
17 section by such persons.

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

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

34 (2) Either directly or through the notification
35 center, notify excavators and the public in the vicinity of
36 his [or], her, or its underground pipeline facility of the
37 availability of the notification center by including the

38 information set out in subsection 1 of section 319.025 in
39 notifications required by the safety rules of the Missouri
40 public service commission relating to its damage prevention
41 program;

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

319.025. 1. Except as provided in subsection 4 of
2 section 319.030 and in section 319.050, [a person] **an**
3 **excavator** shall not make or begin any excavation in any
4 public street, road or alley, right-of-way dedicated to the
5 public use or utility easement of record or within any
6 private street or private property [without first giving]
7 **until such excavator gives** notice to the notification center
8 and [obtaining] **obtains** information concerning the possible
9 location of any underground facilities which may be affected
10 by said excavation from underground facility owners whose
11 names appear on the current list of participants in the
12 notification center and who were communicated to the
13 excavator as notification center participants who would be
14 informed of the excavation notice. Notice to the
15 notification center of proposed excavation shall be deemed
16 notice to all owners and operators of underground
17 facilities. The notice referred to in this section shall
18 comply with the provisions of section 319.026.

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

24 3. Notification center participants shall be relieved
25 of the responsibility to respond to a notice of intent to

26 excavate received directly from the person intending to
27 commence an excavation, except for requests for
28 clarification of markings through on-site meetings as
29 provided in subsection 1 of section 319.030 and requests for
30 locations at the time of an emergency as provided by section
31 319.050.

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

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

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

15 (1) The name and telephone number of the person filing
16 the notice of excavation, if the telephone number is
17 different than that of the excavator, and the name, address,

18 **and** telephone number of the excavator [and whether the
19 excavator's telephone is equipped with a recording device];

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

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

28 (4) The name of the person primarily responsible for
29 conducting the excavation or managing the excavation
30 process, and if any of the information stated in subdivision
31 (1) or (3) of this subsection is different for the person
32 primarily responsible for the excavation, the notice shall
33 also state the same information for that person;

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

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

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

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

57 **3. When the location of the planned excavation cannot**
58 **be clearly identified solely by the means described in**
59 **subdivision (5) of subsection 2 of this section, the**
60 **excavator may also designate the planned excavation route or**
61 **area to be excavated by physical white lining using white**
62 **paint, stakes, whiskers, or other similar markings on and**
63 **along the area to be excavated, or by electronic white**
64 **lining when available through the notification center. Such**
65 **information may be provided to the notification center prior**
66 **to or with the notification required under this section.**

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

74 **[4.] 5.** A record of each notice of intent to excavate
75 shall be maintained by the notification center for a period
76 of five years. The record shall include the date the notice
77 was received and all information required by subsection 2 of
78 this section which was provided by the excavator and a
79 record of the underground facility owners notified by the
80 notification center. If the notification center creates a

81 record of the notice by telephonic recording, such record of
82 the original notice shall be maintained for one year from
83 the date of receipt. Records of notices to excavate
84 maintained by the notification center in electronic form
85 shall be deemed to be records under this subsection.
86 Persons holding records of notices of intent to excavate and
87 records of information provided to the excavator by the
88 notification center or owner or operator of the facility
89 shall make copies of such records available for a reasonable
90 copying fee upon the request of the owner or operator of the
91 underground facilities or the excavator filing the notice.

92 [5.] 6. If in the course of excavation the person
93 responsible for the excavation operations discovers that the
94 owner or operator of the underground facility who is a
95 participant in a notification center has incorrectly located
96 the underground facility, **or if the discovery of an**
97 **underground facility is not marked**, he or she shall notify
98 the notification center which shall inform the underground
99 facility owner. The underground facility owner shall
100 respond to the incorrect locate notification within two
101 hours of receipt of the notification by contacting the
102 person responsible for the excavation or by correctly
103 locating their underground facility. The person responsible
104 for maintaining records of the location of underground
105 facilities for the notification center participant shall
106 correct such records to show the actual location of such
107 facilities, if current records are incorrect.

108 [6.] 7. When markings have been provided in response
109 to a notice of intent to excavate, excavators may commence
110 or continue to work within the area described in the notice
111 for so long as the markings are visible. If an excavator is
112 unable to begin the excavation within ten working days as

113 described in the request, the excavator shall make a
114 relocate request before beginning the excavation. If
115 markings become unusable due to weather, construction or
116 other cause, the excavator shall contact the notification
117 center to request remarking. Such notice shall be given in
118 the same manner as original notice of intent to excavate,
119 and the owner or operator shall remark the site in the same
120 manner, within the same time, as required in response to an
121 original notice of intent to excavate. Each excavator shall
122 exercise reasonable care not to unnecessarily disturb or
123 obliterate markings provided for location of underground
124 facilities. If remarking is required due to the excavator's
125 failure to exercise reasonable care, or if repeated
126 unnecessary requests for remarking are made by an excavator
127 even though the markings are visible and usable, the
128 excavator may be liable to the owner or operator for the
129 reasonable cost of such remarking. Nothing in this section
130 shall allow any person other than the facility owner or
131 their representative to mark or relocate any underground
132 facility.

133 [7.] 8. Before commencing excavation, the excavator
134 shall determine best practices for confirming the horizontal
135 and vertical location of facilities at the site of
136 excavation considering conditions at the site including
137 geology, access to the site, and the presence of paved
138 surfaces. Hand digging or soft digging shall be used as a
139 best practice when possible.

140 [8.] 9. In the event of any damage, dislocation, or
141 disturbance of any underground facility in connection with
142 any excavation, the person responsible for the excavation
143 operations shall notify the notification center. This
144 subsection shall be deemed to require reporting of any

145 damage, dislocation, or disturbance to trace wires,
146 encasements, cathode protection, permanent above-ground
147 stakes, or other such items utilized for protection of the
148 underground facility. **The notification center shall**
149 **promptly notify the owner of the underground facility of**
150 **such damage, dislocation, or disturbance.** The excavator
151 shall immediately contact 911 when any damage or contact
152 with a pipeline results in a release from the pipeline of
153 hazardous liquid or gas to occur.

154 **10. The owner of the underground facility shall,**
155 **within sixty days of the earlier of receipt of notice as**
156 **required under subsection 9 of this section or actual notice**
157 **by other means of an incident involving damage, dislocation,**
158 **or disturbance of the underground facility, submit a report**
159 **of the incident to the notification center and the excavator**
160 **which includes the following:**

161 (1) A description of the incident, including whether
162 it resulted in real or personal property damage, personal
163 injury, or death;

164 (2) A description of the damage to the underground
165 facility;

166 (3) The actual or estimated cost to repair the damaged
167 facility or other property; and

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

169 If any of the information required in the incident report is
170 not known or reasonably available to the facility owner,
171 such information shall be reported by the facility owner to
172 the notification center within sixty days of the submission
173 of the initial report. Except for information subject to
174 protection by an individual privacy interest as determined
175 by the notification center, any information contained in the

176 incident report shall be available for public inquiry. The
177 notification center shall maintain a database of incident
178 reports and each incident report shall be maintained by the
179 notification center for a minimum of five years. It shall
180 be a continuing obligation of the underground facility owner
181 to submit incident reports when an incident occurs. If an
182 underground facility owner fails to timely submit an
183 incident report in accordance with this subsection, the
184 owner shall be subject to a fine imposed by the attorney
185 general under the authority of section 319.045, not to
186 exceed two hundred fifty dollars per day until such incident
187 report is filed and not to exceed five thousand dollars in
188 the aggregate. The filing of an incident report shall be a
189 condition precedent to the right of a facility owner to file
190 and maintain a lawsuit for damages against an excavator as a
191 result of a violation of sections 319.015 to 319.050.

192 [9.] 11. In the event of any damage, dislocation, or
193 disturbance to any underground facility or any protective
194 devices required to be reported by the excavator under
195 subsection [8] 9 of this section in advance of or during the
196 excavation work, the person responsible for the excavation
197 operations shall not conceal or attempt to conceal such
198 damage, dislocation, or disturbance, nor shall that person
199 attempt to make repairs to the facility unless authorized by
200 the underground facility owner. In the case of sewer lines
201 or facilities, emergency temporary repairs may be made by
202 the excavator after notification without the owners' or
203 operators' authorization to prevent further damage to the
204 facilities. Such emergency repairs shall not relieve the
205 excavator of responsibility to make notification as required
206 by subsection [8] 9 of this section.

207 [10.] 12. No later than April [1, 2015, and] **first of**
208 each year [thereafter], each underground facility owner who
209 owns or operates electric, gas, or pipeline facilities shall
210 submit to a central repository designated by the
211 notification center a report of damages experienced by its
212 facilities for the prior calendar year. The notification
213 center shall determine the minimum information to be
214 reported. All data submitted shall be aggregated and
215 anonymous. Information provided by the underground facility
216 owner specific to damage data submitted shall be accessible
217 only to the underground facility owner unless otherwise
218 designated by the underground facility owner.

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

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

8 2. Design requests shall be made to the notification
9 center at least five working days[, but not more than ten
10 working days,] before the date the person has requested
11 receiving the information from the underground facility
12 owner. Upon receipt of a design request, the notification

13 center shall inform the person of the name of all
14 notification center participants to whom the notice will be
15 transmitted and shall promptly transmit such notice to the
16 appropriate underground facility owners.

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

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

319.030. 1. Every person owning or operating an
2 underground facility to whom notice of intent to excavate is
3 required to be given shall, upon receipt of such notice as
4 provided in this section from a person intending to commence
5 an excavation, inform the excavator as promptly as
6 practical, but not in excess of two working days, unless the
7 excavator agrees to extend the start date and time provided
8 in the locate request through methods established by the
9 notification center, of the approximate location of
10 underground facilities in or near the area of the excavation

11 so as to enable the person engaged in the excavation work to
12 locate the facilities in advance of and during the
13 excavation work, provided that no excavation shall begin
14 earlier than the scheduled excavation date provided on the
15 locate request unless the excavator has confirmed that all
16 underground facilities have been located. The two working
17 days provided for notice in this subsection and subsection 1
18 of section 319.026 shall begin at 12:00 a.m. following the
19 receipt of the request by the notification center. Each
20 underground facility owner receiving notifications from the
21 notification center by use of the internet shall, after
22 December 31, 2014, use the locate status system provided by
23 the notification center. Those underground facility owners
24 that do not receive notifications by use of the internet
25 shall, no later than January 1, 2016, provide locate status
26 to the notification center by an alternate method provided
27 by the notification center. If the excavator states in the
28 notice of intent to excavate that the excavation will
29 involve trenchless technology, the owner or operator shall
30 inform the excavator of the depth, to the best of his [or],
31 her, **or its** knowledge or ability, of the facility according
32 to the records of the owner or operator. The owner or
33 operator shall provide the approximate location of
34 underground facilities by use of markings as designated in
35 section 319.015. Persons representing the excavator and the
36 owner or operator shall meet on the site of excavation
37 within two working days of a request by either person for
38 such meeting for the purpose of clarifying markings, or upon
39 agreement of the excavator and owner or operator, such
40 meeting may be an alternate means of providing the location
41 of facilities by originally marking the approximate location
42 of the facility at the time of the meeting. If upon receipt

43 of a notice of intent to excavate, an owner or operator
44 determines that he or she neither owns or operates
45 underground facilities in or near the area of excavation,
46 the owner or operator shall within two working days after
47 receipt of the notice, inform the excavator that the owner
48 or operator has no facilities located in the area of the
49 proposed excavation. The owner or operator of the
50 underground facility shall make notice to the excavator that
51 no facilities are located in the area of excavation by
52 contacting the excavator by any of the following methods:

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

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

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

61 (4) By notifying the excavator by [facsimile or]
62 electronic mail at [numbers or] addresses stated by the
63 excavator in the notice of excavation made under subsection
64 2 of section 319.026;

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

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

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

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

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

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

89 4. In the event that a person owning or operating an
90 underground facility fails to comply with the provisions of
91 subsection 1 of this section after notice given by an
92 excavator in compliance with section 319.026, the excavator,
93 prior to commencing the excavation, shall give a second
94 notice to the notification center as required by section
95 319.026 stating that there has been no response to the
96 original notice given under section 319.026. After the
97 receipt of the notice stating there has been "no response",
98 the owner or operator of an underground facility shall,
99 within two hours of the receipt of such notice, mark its
100 facilities or contact and inform the excavator of when the
101 facilities will be marked; provided, however, that for "no
102 response" notices made to the notification center by 2:00
103 p.m., the markings shall be completed on the working day the
104 notice is made to the notification center, and provided that
105 for "no response" notices made to the notification center

106 after 2:00 p.m., the markings shall be completed no later
107 than 10:00 a.m. on the next working day. If an underground
108 facility owner fails to mark its facilities or contact the
109 excavator as required by this subsection, the excavator may
110 commence the excavation. Nothing in this subsection shall
111 excuse the excavator from exercising the degree of care in
112 making the excavation as is otherwise required by law.

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

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

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

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

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

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

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

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

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

**319.034. 1. For purposes of sections 319.010 to
2 319.050, the location of underground facilities provided by
3 a facility owner or operator in accordance with section
4 319.026 to any person engaging in scheduled excavating shall
5 be accurate. If any underground facility becomes damaged by
6 an excavator due to the furnishing of inaccurate information
7 as to its location by the facility owner or operator, the
8 excavator shall not be subject to any liability resulting
9 from damage to the underground facility as a result of the
10 excavating, provided that such person engaging in scheduled
11 excavating complies with the requirements of sections
12 319.010 to 319.050 with respect to such excavation and there
13 is no evidence visible and obvious to the excavator of the
14 presence of a mismarked underground facility.**

15 2. Upon documented evidence that the person seeking
16 information as to the location of underground facilities has

17 **incurred losses or expenses due to inaccurate information,**
18 **lack of information, or unreasonable delays in supplying**
19 **information by the facility owners or operators, such**
20 **facility owners or operators shall be liable to such person**
21 **for any losses or expenses.**

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

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

3. [The failure of any excavator to give notice of
10 proposed excavation activities as required by this chapter
11 shall be a rebuttable presumption of negligence on his or
12 her part in the event that such failure shall cause injury,
13 loss, or damage. In addition to any penalties provided
14 herein, liability under common law may apply] **In addition to**
15 **any fines or penalties payable to the state as provided in**
16 **sections 319.010 to 309.050, a person injured by the**
17 **negligence of an excavator or an underground facility owner**
18 **or operator may recover any proximately caused damages**
19 **allowed under the common law.**

4. The failure of an underground facility owner **or a**
21 **locator or other contractor engaged by the facility owner** to
22 mark [his or her] **the facility owner's** facilities that are
23 located in an area of excavation described in a notice of
24 intent to excavate received by the underground facility
25 owner, as required by section 319.030, or the failure of an
26 underground facility owner to be a notification center
27 participant, consistent with the provisions of section

28 319.022, shall be a rebuttable presumption of negligence on
29 the part of such owner, **and of the locator or other**
30 **contractor engaged by the facility owner**, in the event that
31 such failure shall cause injury, loss, or damage. In
32 addition to any penalties provided herein, liability under
33 common law may apply.

34 5. The failure of any excavator to give notice of
35 proposed excavation activities as required under sections
36 319.010 to 319.050 shall be a rebuttable presumption of
37 negligence on the part of the excavator in the event that
38 such failure causes injury, loss, or damage.

39 6. If a court finds in any civil action commenced
40 under sections 319.010 to 319.050 that a cause of action was
41 initiated or a defense was asserted frivolously and in bad
42 faith, the court may require the party who initiated such
43 cause or asserted such defense to pay the other party named
44 in such action reasonable expenses and attorney's fees
45 incurred to oppose such cause or defense.

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