

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2222

AN ACT

AMENDING SECTIONS 40-360.21, 40-360.22, 40-360.23, 40-360.25, 40-360.26, 40-360.27, 40-360.28, 40-360.30 AND 40-360.32, ARIZONA REVISED STATUTES; RELATING TO UNDERGROUND FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 40-360.21, Arizona Revised Statutes, is amended to
3 read:

4 40-360.21. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abandoned" means no longer in service and physically disconnected
7 from a portion of the facility, or from any other facility, that is in use or
8 still carries service.

9 2. "APARTMENT COMPLEX" MEANS ANY REAL PROPERTY THAT HAS ONE OR MORE
10 STRUCTURES AND CONTAINS FIVE OR MORE DWELLING UNITS FOR RENT OR LEASE THAT
11 ARE SUBJECT TO TITLE 33, CHAPTER 10.

12 ~~2.~~ 3. "Building official" means the officer employed by a political
13 subdivision of this state and charged with the administration and enforcement
14 of a building code to regulate the quality, type of material and workmanship
15 of construction of buildings or structures.

16 ~~3.~~ 4. "Careful and prudent manner" means conducting AN excavation in
17 such a way that when ~~it is within~~ THE EXCAVATION IS LESS THAN OR EQUAL TO
18 twenty-four inches ~~of the~~ FROM AN underground facility ~~located and~~ THAT IS
19 marked ~~by the underground facilities operator, by~~ WITH stakes, paint or in
20 some customary manner, the exact location is manually determined, and the
21 uncovered facility is supported and protected.

22 ~~4.~~ 5. "Cross culverts or similar roadway drainage facilities" means
23 transverse drainage structures with both ends or openings visible and
24 includes box culverts, drainage pipes or other covered structures.

25 ~~5.~~ 6. "Detectible underground location device" means any device that
26 is installed underground and that is capable of being detected from above
27 ground with an electronic locating device.

28 7. "DWELLING UNIT" HAS THE SAME MEANING PRESCRIBED IN SECTION 33-1310.

29 ~~6.~~ 8. "Excavation" means any operation in which earth, rock or other
30 material in the ground is moved, removed or otherwise displaced by means or
31 use of any tools, equipment or explosives and includes, without limitation,
32 grading, trenching, digging, ditching, drilling, augering, boring,
33 tunnelling, scraping, cable or pipe plowing and driving.

34 ~~7.~~ 9. "Implied easement" means any easement or right-of-way on
35 private property required to provide utility services by means of underground
36 facilities in property of the owner requesting such service.

37 ~~8.~~ 10. "Inactive" means:

38 (a) That portion of an underground facility that is not in use but is
39 still connected to the facility, or to any other facility, that is in use or
40 still carries service.

41 (b) A new underground facility that has not been connected to any
42 portion of an existing facility.

43 ~~9.~~ 11. "Installation records of an underground facility" means maps,
44 drawings, diagrams, surveys, schematics, illustrations, sketches or any other
45 depictions or descriptions of an underground facility that reflect the

1 location at the time of installation of the underground facility and any
2 surface extensions in a reasonably accurate manner.

3 12. "LANDLORD" HAS THE SAME MEANING PRESCRIBED IN SECTION 33-1310 FOR
4 AN APARTMENT COMPLEX AND HAS THE SAME MEANING PRESCRIBED IN SECTION 33-1409
5 FOR A MOBILE HOME PARK.

6 ~~10-~~ 13. "Locator strip" means a type of detectible underground
7 location device that consists of a plastic or other durable material ribbon
8 containing a material capable of being detected from above ground with an
9 electronic locating device and color coded by type of underground facility.

10 ~~11-~~ 14. "Locator wire" means a type of detectible underground location
11 device that consists of a copper wire or metallic, conductive, noncorrosive
12 trace wire capable of being detected from above ground with an electronic
13 locating device.

14 15. "MOBILE HOME PARK" HAS THE SAME MEANING PRESCRIBED IN SECTION
15 33-1409.

16 ~~12-~~ 16. "One-call notification center" means an organization of owners
17 or operators of underground facilities that provides a telephone number
18 notification service for the purpose of receiving and distributing to its
19 members advance notifications from persons regarding planned excavations.

20 ~~13-~~ 17. "Person" means any individual, firm, joint venture,
21 partnership, corporation, association, municipality, governmental unit,
22 department or agency and shall include any trustee, receiver, assignee or
23 personal representative thereof.

24 ~~14-~~ 18. "Routine road maintenance grading" means the routine grading
25 or resurfacing of the concrete, asphaltic or composite surface but not the
26 subbase of a roadway by the state or a political subdivision of the state for
27 the purpose of maintaining the surface condition of the road and includes
28 recovery of material from a borrow ditch.

29 ~~15-~~ 19. "Stakes, paint or in some customary manner" means marking the
30 location of an underground facility by the colors established by the
31 commission. These colors shall be restricted to the underground facility
32 location.

33 ~~16-~~ 20. "Underground facilities operator" means a public utility,
34 municipal corporation, LANDLORD or other person having the right to bury
35 underground facilities in any public street, alley, right-of-way dedicated to
36 the public use, or utility easement, IN ANY APARTMENT COMPLEX OR MOBILE HOME
37 PARK or pursuant to any express or implied private property easement.
38 Underground facilities operator does not include a homeowner that owns a
39 sewer facility in a public street, alley, right-of-way dedicated to public
40 use or utility easement.

41 ~~17-~~ 21. "Underground facility" means any item of personal property
42 that is buried or placed below ground for use in connection with the storage
43 or conveyance of water, sewage, electronic, telephonic, or telegraphic
44 communications, electric energy, oil, gas or other substances, and shall
45 include but not be limited to pipes, sewers, conduits, cables, valves, lines,

1 wires, manholes, attachments and those portions of poles and their
2 attachments below ground except cross culverts or similar roadway drainage
3 facilities and landscape irrigation systems of two inches in diameter or
4 less.

5 Sec. 2. Section 40-360.22, Arizona Revised Statutes, is amended to
6 read:

7 40-360.22. Excavations; determining location of underground
8 facilities; providing information; excavator
9 marking; on-site representative; validity period
10 of markings; liability for misuse of locate
11 requests; detectible underground locating devices;
12 civil penalty

13 A. A person shall not make or begin any excavation in any public
14 street, alley, right-of-way dedicated to the public use, or utility easement,
15 in any express or implied private property utility easement, **OR IN ANY**
16 **APARTMENT COMPLEX OR MOBILE HOME PARK** without first determining whether
17 underground facilities will be encountered, and if so where they are located
18 from each and every underground facilities operator and taking measures for
19 control of the facilities in a careful and prudent manner.

20 B. Every underground facilities operator, **EXCEPT A LANDLORD THAT DOES**
21 **NOT OPERATE UNDERGROUND FACILITIES IN A PUBLIC STREET, ALLEY, RIGHT-OF-WAY**
22 **DEDICATED TO THE PUBLIC USE OR UTILITY EASEMENT**, shall file with the
23 corporation commission the job title, address and telephone number of the
24 person or persons from whom the necessary information may be obtained. Such
25 person or persons shall be readily available during established business
26 hours. The information on file shall also include the name, address and
27 telephone number of each one-call notification center to which the
28 underground facilities operator belongs. Upon receipt of inquiry or notice
29 from the excavator, the underground facilities operator shall respond as
30 promptly as practical, but in no event later than two working days, by
31 marking such facility with stakes, paint or in some customary manner. No
32 person shall begin excavating before the location and marking are complete or
33 the excavator is notified that marking is unnecessary. If the excavator
34 consents, an underground facilities operator may notify the one-call
35 notification center that marking is unnecessary pursuant to a method
36 established by the one-call notification center. An underground facilities
37 operator may delegate any marking or notification obligations required by
38 this subsection to an agent or servant of the underground facilities
39 operator. An underground facilities operator may notify the excavator that
40 marking is unnecessary pursuant to any mutually agreeable method.

41 C. On a timely request by the underground facilities operator, the
42 excavator shall mark the boundaries of the ~~location~~ **AREA** requested to be
43 excavated in accordance with a color code designated by the commission or by
44 applicable custom or standard in the industry. A request under this

1 subsection for excavator marking does not alter any other requirement of this
2 section.

3 D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, A PERSON SHALL
4 NOT BEGIN EXCAVATING IN ANY APARTMENT COMPLEX OR MOBILE HOME PARK BEFORE THE
5 LANDLORD HAS COMPLETED MARKING THE UNDERGROUND FACILITY OR THE EXCAVATOR IS
6 NOTIFIED THAT MARKING IS UNNECESSARY. AFTER UNDERGROUND FACILITY MARKINGS
7 ARE COMPLETE OR THE EXCAVATOR HAS RECEIVED NOTICE THAT MARKING IS
8 UNNECESSARY, AN EXCAVATOR SHALL NOTIFY EITHER THE LANDLORD OR ONE-CALL
9 NOTIFICATION CENTER IF ANY OF THE FOLLOWING CONDITIONS EXISTS:

10 1. VISIBLE AND OBVIOUS EVIDENCE, SUCH AS PAVEMENT CUTS, THAT WOULD
11 ALERT A REASONABLE EXCAVATOR TO THE PRESENCE OF AN UNMARKED UNDERGROUND
12 FACILITY WITHIN THE BOUNDARY OF THE INTENDED AREA OF EXCAVATION.

13 2. THE EXCAVATOR HAS CONCERNS REGARDING THE ACCURACY AND MEANING OF
14 THE MARKS.

15 3. THE EXCAVATOR ENCOUNTERS AN UNDERGROUND FACILITY THAT HAS NOT BEEN
16 MARKED.

17 4. THE EXCAVATOR ENCOUNTERS AN UNDERGROUND FACILITY THAT HAS BEEN
18 INCORRECTLY MARKED OR MARKED IN THE WRONG LOCATION.

19 E. IF A LANDLORD MANIFESTS A REFUSAL TO RESPOND TO AN EXCAVATOR'S
20 REQUEST IN A MANNER REQUIRED BY THIS ARTICLE, AN EXCAVATOR DOES NOT VIOLATE
21 THIS ARTICLE AND FULFILLS THE STANDARD OF CARE OF A REASONABLY PRUDENT
22 EXCAVATOR IF THE EXCAVATOR COMPLIES WITH ALL OF THE FOLLOWING:

23 1. THE EXCAVATOR INVESTIGATES FOR THE PRESENCE OF VISIBLE AND OBVIOUS
24 EVIDENCE THAT WOULD ALERT A REASONABLE EXCAVATOR TO THE PRESENCE OF AN
25 UNMARKED UNDERGROUND FACILITY WITHIN THE BOUNDARIES OF THE AREA TO BE
26 EXCAVATED.

27 2. ONE WORKING DAY BEFORE CONDUCTING THE EXCAVATION, THE EXCAVATOR
28 NOTIFIES, IN WRITING, THE ONE-CALL NOTIFICATION CENTER OR THE LANDLORD THAT
29 THE EXCAVATOR HAS DETERMINED THAT THE ACTS OR OMISSIONS OF THE LANDLORD IS A
30 REFUSAL TO RESPOND TO AN EXCAVATOR'S REQUEST.

31 3. THE EXCAVATOR CAREFULLY LOCATES ALL UNMARKED FACILITIES THAT ARE
32 KNOWN TO EXIST DUE TO THE EXCAVATOR'S INVESTIGATION PERFORMED PURSUANT TO
33 PARAGRAPH 1 OF THIS SUBSECTION USING ONE OF THE METHODS LISTED IN SUBSECTION
34 F OF THIS SECTION AND CAREFULLY MARKS THE FACILITIES WITH STAKES, PAINT OR IN
35 SOME CUSTOMARY MANNER.

36 4. THE EXCAVATOR TAKES MEASURES TO CONTROL ALL SUCH LOCATED FACILITIES
37 IN A CAREFUL AND PRUDENT MANNER.

38 5. THE EXCAVATOR SHALL NOT EXCAVATE IF THE EXCAVATOR RECEIVES A
39 RESPONSE FROM THE ONE-CALL NOTIFICATION CENTER OR THE LANDLORD THAT NOTIFIES
40 OR ALERTS THE EXCAVATOR TO THE PRESENCE OF A MISTAKE OR AN INTENTION BY THE
41 LANDLORD TO RESPOND IN A MANNER THAT IS CONSISTENT WITH THIS ARTICLE, EVEN IF
42 THE RESPONSE WILL BE UNTIMELY. A LANDLORD'S DELAY, FAILURE TO RESPOND TO A
43 LOCATION REQUEST, FAILURE TO CAREFULLY MARK OR OTHER NONCOMPLIANCE IS NOT
44 EXCUSED BY THE EXCAVATOR'S OR LANDLORD'S COMPLIANCE WITH THIS SUBSECTION.

1 ~~D~~ F. Except as otherwise provided in this section, in performing the
2 marking required by subsection B of this section, the underground facilities
3 operator of an underground facility installed after December 31, 1988 in a
4 public street, alley or right-of-way dedicated to public use, but not
5 including any express or implied private property utility easement, shall
6 CAREFULLY locate the facility by referring to installation records of the
7 facility and utilizing one of the following methods:

- 8 1. Vertical line or facility markers.
- 9 2. Locator strip or locator wire.
- 10 3. Signs or permanent markers.
- 11 4. Electronic or magnetic location or tracing techniques.
- 12 5. Electronic or magnetic sensors or markers.
- 13 6. Metal sensors or sensing techniques.
- 14 7. Sonar techniques.
- 15 8. Underground electrical or radio transmitters.
- 16 9. Manual location techniques, including pot-holing.
- 17 10. Surface extensions of underground facilities.
- 18 11. Any other surface or subsurface location technique that is at least
19 as accurate as the other marking methods in this subsection and that is not
20 prohibited by the commission or by federal or state law.

21 ~~E~~ G. Except as otherwise provided in this section, for an
22 underground facility other than one installed after December 31, 1988, in a
23 public street, alley or right-of-way dedicated to public use, in performing
24 the marking required by subsection B of this section, the underground
25 facilities operator may refer to installation RECORDS or other records
26 relating to the facility to assist in locating the facility and shall
27 CAREFULLY locate the facility utilizing one of the methods listed under
28 subsection ~~D~~ F of this section.

29 ~~F~~ H. If an underground facilities operator is unable to complete the
30 location and marking within the time period provided by subsection B of this
31 section, the facilities operator shall satisfy the requirements of this
32 section by providing prompt notice of these facts to the excavator and
33 assigning one or more representatives to be present on the excavation site at
34 all pertinent times as requested by the excavator to provide facility
35 location services until the facilities have been located and marked. The
36 underground facilities operator shall bear all of its own ~~costs~~ EXPENSES
37 associated with assigning representatives. If representatives are assigned
38 under this subsection, the excavator is not responsible or liable for damage
39 to or repair of the underground facilities operator's underground facility
40 while acting under the direction of an assigned representative of the
41 underground facilities operator, unless the damage or need for repair was
42 caused by the excavator's negligence.

43 ~~G~~ I. The marking required by subsection B of this section is valid
44 for fifteen days from the date of the marking, excluding Saturdays, Sundays
45 and other legal holidays. If the excavation will continue past the validity

1 period of the marks as provided by this subsection, the excavator shall
2 notify the underground facilities operator or an organization designated by
3 the underground facilities operator at least two days, excluding Saturdays,
4 Sundays and other legal holidays, before the end of the validity period. All
5 requests for facility markings and requests to extend the validity period of
6 the markings shall be for the purpose of excavating within the validity
7 period of the markings. An excavator that requests facility markings shall
8 limit the request to an area that can reasonably be excavated within the
9 validity period of the markings. A person who violates this subsection is
10 liable to the one-call notification center and to all affected underground
11 facilities operators for any resulting damages, ~~costs and~~ INCLUDING ECONOMIC
12 LOSS, LESS expenses SAVED AS A CONSEQUENCE OF THE VIOLATION.

13 ~~H.~~ J. Nothing in this section shall be construed to prevent an
14 excavator and an underground facilities operator from holding a
15 preconstruction conference regarding marking and location of underground
16 facilities and entering into a mutually agreeable written schedule or written
17 arrangement for satisfying the requirements of this section, except that this
18 subsection does not eliminate the excavator's obligation to notify the
19 underground facilities operator to locate and mark excavation sites under
20 subsection B of this section based on the actual construction schedule.

21 ~~I.~~ K. For abandoned and apparently abandoned underground facilities:
22 1. The underground facilities operator shall notify the excavator
23 whether the facility is active or abandoned. An inactive facility shall be
24 considered active for purposes of this subsection. This section does not
25 obligate any person to represent that an underground sewer facility in any
26 public street, alley, right-of-way dedicated to public use or utility
27 easement is abandoned if it was installed on or before December 31, 2005 and
28 it is not owned by an underground facilities operator of a sewer system.

29 2. For an underground facility abandoned after December 31, 1988 or
30 covered by installation records prepared under section 40-360.30, ~~subsection~~
31 ~~A.~~ the underground facilities operator may not advise or represent to the
32 excavator that a facility or portion of a facility is abandoned unless the
33 underground facilities operator has verified, by reference to installation
34 records or by testing, that the facility or portion is actually abandoned and
35 not merely inactive. For all other abandoned or apparently abandoned
36 underground facilities, each one-call notification center shall establish a
37 method of providing personnel from an underground facilities operator
38 qualified to safely inspect and verify that the facility is abandoned or
39 active. ~~and a method for reimbursing the verifying underground facilities~~
40 ~~operator for the costs incurred. The reimbursement method may not include~~
41 ~~any charge or expense to the excavator.~~ For the purposes of this article, an
42 underground facilities operator shall not represent that an underground
43 facility is abandoned unless the facility has been verified as abandoned
44 pursuant to this subsection.

1 3. For the purposes of this article, if an excavator encounters an
2 apparently abandoned underground facility, the excavator shall not treat the
3 underground facility as abandoned until the excavator has received
4 notification that the underground facility is abandoned pursuant to paragraph
5 1 of this subsection or has notified the underground ~~facility~~ FACILITIES
6 operator of the apparent abandonment and has received verification of
7 abandonment pursuant to paragraph 2 of this subsection.

8 4. EACH ONE-CALL NOTIFICATION CENTER SHALL ESTABLISH A METHOD FOR
9 REIMBURSING THE VERIFYING UNDERGROUND FACILITIES OPERATOR FOR THE EXPENSES
10 INCURRED UNDER PARAGRAPH 2 OF THIS SUBSECTION. THE REIMBURSEMENT METHOD
11 SHALL NOT INCLUDE ANY CHARGE OR EXPENSE TO THE EXCAVATOR. A LANDLORD THAT
12 FAILS TO ADVISE OR REPRESENT THAT AN UNDERGROUND FACILITY IS ABANDONED
13 PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION, WHOSE UNDERGROUND FACILITY IS
14 VERIFIED AS ABANDONED PURSUANT TO THIS SUBSECTION AND WHO IS NOT A MEMBER OF
15 A ONE-CALL NOTIFICATION CENTER IS LIABLE TO THE ONE-CALL NOTIFICATION CENTER
16 AND TO ALL AFFECTED UNDERGROUND FACILITIES OPERATORS AND EXCAVATORS FOR THE
17 COST OF VERIFYING ABANDONMENT TOGETHER WITH ANY RESULTING DAMAGES, INCLUDING
18 ECONOMIC LOSS, LESS EXPENSES SAVED AS A CONSEQUENCE OF THE FAILURE.

19 ~~J.~~ L. All new and active underground facilities installed in any real
20 property after December 31, 2005 shall be installed with a detectible
21 underground location device unless the facility is capable of being detected
22 from above ground with an electronic locating device. A person who violates
23 this subsection is subject to a civil penalty in an amount not to exceed five
24 thousand dollars. The building official shall administer and enforce this
25 subsection for all underground facilities except those that are installed for
26 a public utility or municipal corporation. Any penalties received by the
27 building official shall be deposited in the municipality's or political
28 subdivision's general fund, as applicable.

29 ~~K.~~ M. Nothing in this section shall be construed as prohibiting the
30 use of warning tape, warning markers or any other warning device by the
31 underground facilities operator.

32 ~~L.~~ N. For every underground facilities operator of a sewer system:
33 1. For the purposes of this article, an underground facilities
34 operator of a sewer system is responsible for locating and CAREFULLY marking
35 the underground sewer facilities owned by another person pursuant to
36 subsection B of this section if those underground facilities are installed
37 after December 31, 2005 and are in any public street, alley, right-of-way
38 dedicated to public use or utility easement.

39 2. In performing the marking required by this subsection, the
40 underground facilities operator of the sewer system shall CAREFULLY locate
41 the facility by referring to installation records of the facility and by
42 using one of the methods listed in subsection ~~D-~~ F of this section.

43 3. This subsection does not obligate an underground facilities
44 operator of a sewer system to locate and mark the underground sewer
45 facilities owned by another person if the customer receiving sewer service

1 from the underground sewer facility refuses to grant permission to the
2 underground facilities operator of a sewer system to access the real property
3 for the purpose of ascertaining the location of the underground sewer
4 facility in any public street, alley, right-of-way dedicated to public use or
5 easement.

6 4. This subsection does not obligate an underground facilities
7 operator of a sewer system to maintain, clean or unstop underground sewer
8 facilities owned by another person.

9 0. FOR EVERY LANDLORD:

10 1. FOR THE PURPOSES OF THIS ARTICLE, EACH LANDLORD IS RESPONSIBLE FOR
11 CAREFULLY MARKING THE UNDERGROUND FACILITIES OWNED BY THE LANDLORD OR BY
12 ANOTHER PERSON PURSUANT TO SUBSECTION B OF THIS SECTION IF THOSE UNDERGROUND
13 FACILITIES ARE IN AN APARTMENT COMPLEX OR MOBILE HOME PARK.

14 2. PARAGRAPH 1 OF THIS SUBSECTION DOES NOT OBLIGATE A LANDLORD TO
15 LOCATE AND MARK AN UNDERGROUND FACILITY OWNED OR OPERATED BY A PUBLIC UTILITY
16 OR A MUNICIPAL CORPORATION.

17 3. IN PERFORMING THE MARKING REQUIRED BY THIS SUBSECTION FOR AN
18 UNDERGROUND FACILITY INSTALLED AFTER DECEMBER 31, 2006, THE LANDLORD SHALL
19 CAREFULLY LOCATE THE FACILITY BY REFERRING TO INSTALLATION RECORDS OF THE
20 FACILITY AND BY USING ONE OF THE METHODS LISTED IN SUBSECTION F OF THIS
21 SECTION. IN PERFORMING THE MARKING REQUIRED BY THIS SUBSECTION FOR AN
22 UNDERGROUND FACILITY INSTALLED BEFORE JANUARY 1, 2007, THE LANDLORD MAY REFER
23 TO INSTALLATION RECORDS OR OTHER RECORDS RELATING TO THE FACILITY TO ASSIST
24 IN LOCATING THE FACILITY AND SHALL LOCATE THE FACILITY USING ONE OF THE
25 METHODS LISTED IN SUBSECTION F OF THIS SECTION.

26 4. ANY RULE, REGULATION, LEASE OR AGREEMENT THAT PURPORTS TO OBLIGATE
27 A TENANT TO PERFORM THE LANDLORD'S OBLIGATIONS REQUIRED BY THIS ARTICLE IS
28 AGAINST THE PUBLIC POLICY OF THIS STATE AND IS VOID.

29 5. THIS SUBSECTION DOES NOT OBLIGATE A LANDLORD TO MAINTAIN, CLEAN OR
30 UNSTOP UNDERGROUND FACILITIES OWNED BY ANOTHER PERSON.

31 Sec. 3. Section 40-360.23, Arizona Revised Statutes, is amended to
32 read:

33 40-360.23. Making excavation in careful, prudent manner;
34 liability for negligence; notice; response;
35 obliteration of marks; representative availability

36 A. Obtaining information as required by this article does not excuse
37 any person making any excavation from doing so in a careful and prudent
38 manner, nor shall it excuse such persons from liability for any damage or
39 injury resulting from ~~his~~ THEIR negligence.

40 B. After markings have been made pursuant to section 40-360.22, an
41 excavator shall notify either the underground facilities operator or an
42 organization designated by the underground facilities operator if the
43 excavator encounters an underground facility that has not been located and
44 marked or has been marked in the wrong location.

1 C. Unless it would interfere with compliance with commission rules or
2 requirements regarding maintenance or restoration of service and repair of
3 facilities, the underground facilities operator shall immediately respond to
4 a notification under subsection B of this section for emergencies involving
5 injury or damage.

6 D. An excavator or an underground facilities operator shall not move
7 or obliterate markings made pursuant to section 40-360.22, subsection B or
8 fabricate markings in an unmarked location for the purpose of concealing or
9 avoiding liability for a violation of or noncompliance with this article.

10 E. ALL underground facilities operators, EXCEPT LANDLORDS, in a
11 county having a population of more than seven hundred one thousand persons
12 according to the most recent United States decennial census shall have
13 designated representatives available and on call for excavators who by public
14 works contract specifications or municipal ordinances are required to work in
15 congested locations involving public streets, alleys or rights-of-way
16 dedicated to the public use during the night or on weekends. Night and
17 weekend telephone numbers to reach the designated representatives shall be
18 furnished to the excavator in writing within forty-eight hours after they are
19 requested for a specific location.

20 Sec. 4. Section 40-360.25, Arizona Revised Statutes, is amended to
21 read:

22 40-360.25. Injunction; mandamus

23 A. If any person is engaging in excavation in ~~a negligent or unsafe~~
24 ~~manner which~~ VIOLATION OF THIS ARTICLE AND THE VIOLATION has resulted in or
25 is likely to result in damage to an underground facility or if any person is
26 proposing to use procedures for excavation ~~which~~ IN VIOLATION OF THIS ARTICLE
27 THAT are likely to result in damage to an underground facility, ~~the owner of~~
28 ~~such facility~~ ANY AFFECTED UNDERGROUND FACILITIES OPERATOR may commence an
29 action in the superior court in the county in which the excavation is
30 occurring or is to occur, or in which the person complained of has its
31 principal place of business or resides, for the purpose of having such
32 ~~negligent or unsafe excavation~~ ACT OR OMISSION stopped and prevented, either
33 by mandamus or injunction.

34 B. IF ANY LANDLORD IN VIOLATION OF THIS ARTICLE FAILS TO JOIN A
35 ONE-CALL NOTIFICATION CENTER, FAILS TO SUSTAIN THE LANDLORD'S MEMBERSHIP,
36 FAILS TO LOCATE OR MARK AN UNDERGROUND FACILITY IN A MANNER REQUIRED BY THIS
37 ARTICLE OR FAILS TO PREPARE AND MAINTAIN INSTALLATION RECORDS REQUIRED BY
38 THIS ARTICLE, ANY AFFECTED UNDERGROUND FACILITIES OPERATOR OR HARMED
39 EXCAVATOR MAY COMMENCE AN ACTION IN THE SUPERIOR COURT IN THE COUNTY IN WHICH
40 THE FACILITY IS SITUATED OR IN WHICH THE PERSON COMPLAINED OF HAS ITS
41 PRINCIPAL PLACE OF BUSINESS OR RESIDES, FOR THE PURPOSE OF HAVING SUCH ACTS
42 OR OMISSIONS STOPPED AND PREVENTED, EITHER BY MANDAMUS OR INJUNCTION.

43 C. IF ANY LANDLORD IN VIOLATION OF THIS ARTICLE FAILS TO JOIN A
44 ONE-CALL NOTIFICATION CENTER OR FAILS TO SUSTAIN THE LANDLORD'S MEMBERSHIP IN
45 A MANNER REQUIRED BY THIS ARTICLE, THE ONE-CALL NOTIFICATION CENTER MAY

1 COMMENCE AN ACTION IN THE SUPERIOR COURT OF MARICOPA COUNTY OR IN THE
2 SUPERIOR COURT IN THE COUNTY IN WHICH THE FACILITY IS SITUATED OR IN WHICH
3 THE PERSON COMPLAINED OF HAS ITS PRINCIPAL PLACE OF BUSINESS OR RESIDES, FOR
4 THE PURPOSE OF HAVING SUCH ACTS OR OMISSIONS STOPPED AND PREVENTED, EITHER BY
5 MANDAMUS OR INJUNCTION.

6 D. Such persons as the court may deem necessary or proper may be
7 joined as parties.

8 E. The final judgment in any such action or proceeding shall either
9 dismiss the action or direct that the writ of mandamus or injunction issue or
10 be made permanent as prayed for in the complaint. If the court finds that
11 the person complained of has repeatedly engaged in negligent or unsafe
12 excavation ~~resulting in damage to underground facilities after the effective~~
13 ~~date of this article,~~ OR HAS KNOWINGLY VIOLATED THIS ARTICLE WITHOUT JUST
14 CAUSE, the court shall issue such order and take such equitable action as
15 shall be reasonable and appropriate to prevent continuance by such person of
16 such ~~negligent or unsafe operations~~ ACT OR OMISSION.

17 Sec. 5. Section 40-360.26, Arizona Revised Statutes, is amended to
18 read:

19 40-360.26. Damage of underground facility; liability to owner;
20 homeowner exemption

21 A. If any underground facility is damaged by any person in violation
22 of this article as a result of failing to obtain information as to its
23 location, failing to take measures for protection of the facilities or
24 failing to excavate in a careful and prudent manner, the person is liable to
25 the owner of the underground facility for the total cost of the repair of the
26 facility.

27 B. A homeowner engaging in excavating in an express or implied private
28 property utility easement across property owned by the homeowner is not
29 liable to the owner or operator of the underground facility damaged by the
30 homeowner pursuant to this section if the damaged underground facility is not
31 buried or placed below ground in accordance with the applicable standards, if
32 the underground facility is not located within the easement or if the
33 homeowner engaged in the excavation has complied with section 40-360.22.

34 C. NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE, NO HOMEOWNER
35 SHALL BE LIABLE FOR ANY COSTS OR EXPENSES, INCLUDING DAMAGE TO THIRD PARTIES,
36 RESULTING FROM DAMAGE TO AN UNDERGROUND FACILITY OWNED BY THE HOMEOWNER BUT
37 LOCATED WITHIN A PUBLIC RIGHT-OF-WAY IF THE DAMAGE WAS NOT CAUSED BY THE
38 HOMEOWNER'S ACTIONS OR BY THE HOMEOWNER'S REFUSAL TO GRANT PERMISSION TO THE
39 UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM TO ACCESS THE REAL PROPERTY
40 FOR THE PURPOSE OF ASCERTAINING THE LOCATION OF THE UNDERGROUND SEWER
41 FACILITY.

1 1. During an emergency which involves danger to life, health or
2 property if reasonable precautions are taken to protect underground
3 facilities.

4 2. In agricultural operations or for the purpose of finding or
5 extracting natural resources.

6 3. With hand tools on property owned or occupied by the person
7 performing the excavation while gardening or tilling such property.

8 Sec. 8. Section 40-360.30, Arizona Revised Statutes, is amended to
9 read:

10 40-360.30. Installation records of underground facilities

11 A. Except as otherwise provided in this subsection, for all new
12 underground facilities, excluding service drops and service lines, installed
13 after December 31, 1988 in a public street, alley or right-of-way dedicated
14 to the public use, but not including any express or implied private property
15 utility easement, the underground facilities operator shall prepare, ~~or cause~~
16 ~~to be prepared,~~ AND MAINTAIN installation records of the underground
17 facility, ~~shall keep such records in its possession~~ and shall refer to such
18 records in ~~locating and~~ marking pursuant to section 40-360.22, subsection B.

19 B. For all new sewer facilities installed after December 31, 2005 in
20 any public street, alley, right-of-way dedicated to the public use or utility
21 easement, the underground facilities operator of a sewer system shall
22 prepare, ~~or cause to be prepared,~~ AND MAINTAIN installation records of the
23 underground facility, ~~shall keep such records in its possession~~ and shall
24 refer to such records in ~~locating and~~ marking pursuant to section 40-360.22,
25 subsection B. To assist the underground facilities operator of a sewer
26 system in PREPARING AND maintaining such records, a certified survey plan of
27 the sewer's location in the public street, alley, right-of-way dedicated to
28 public use or utility easement shall be provided to the underground
29 facilities operator of a sewer system by the customer receiving sewer service
30 as a condition to receiving such sewer service.

31 C. FOR ALL NEW UNDERGROUND FACILITIES THAT ARE INSTALLED AFTER
32 DECEMBER 31, 2006 IN AN APARTMENT COMPLEX OR MOBILE HOME PARK AND THAT ARE
33 NOT OWNED OR OPERATED BY A PUBLIC UTILITY OR MUNICIPAL CORPORATION, THE
34 LANDLORD SHALL PREPARE AND MAINTAIN INSTALLATION RECORDS OF THE UNDERGROUND
35 FACILITIES, SHALL KEEP SUCH RECORDS IN ITS POSSESSION AND SHALL REFER TO SUCH
36 RECORDS IN MARKING PURSUANT TO SECTION 40-360.22, SUBSECTION B.

37 D. Installation records REQUIRED BY THIS SECTION shall ~~also~~ reflect,
38 if applicable, any field notes or other indications by the installer of the
39 facilities that the installation involved deviations or changes from
40 installation standards, instructions or designs and the correction of any
41 inaccuracies found as a result of locating or marking the underground
42 facilities. Installation records of an underground facility shall indicate
43 if all or a portion of the facility has been abandoned. Installation records
44 required by this section are for the internal use of the underground

1 facilities operator in locating its underground facilities and are not
2 intended to be relied on by others.

3 ~~B-~~ E. Information contained in installation records relating to the
4 nature and location of underground facilities, but not the installation
5 records themselves, shall be made available within ten working days and on a
6 confidential basis to authorized persons who submit a written request and who
7 are engaged in the design of construction projects involving excavation in a
8 public street, alley, right-of-way dedicated to the public use, or utility
9 easement, ~~excluding~~ IN any express or implied private property utility
10 easement, OR IN AN APARTMENT COMPLEX OR MOBILE HOME PARK. The underground
11 facilities operator shall make the same information available to authorized
12 persons who are complying with a requirement imposed by contract providing
13 for construction projects involving excavation in a public street, alley or
14 right-of-way dedicated to the public use, ~~but excluding~~ IN any express or
15 implied private property utility easement, IN ANY APARTMENT COMPLEX OR MOBILE
16 HOME PARK or by operation of law, to verify or confirm the nature and
17 location of underground facilities. ~~The underground facilities operator, on~~
18 ~~consultation with the authorized person, shall determine the appropriate~~
19 ~~manner and form for providing the information.~~ The underground facilities
20 operator may indicate any portions of the information that are proprietary
21 and require the authorized person to protect proprietary matters. The
22 underground facilities operator, ~~in its sole discretion,~~ may satisfy the
23 requirements of this subsection by allowing an authorized person to inspect
24 or copy THE installation records ~~themselves~~ REQUIRED BY THIS SECTION. THE
25 UNDERGROUND FACILITIES OPERATOR IS NOT LIABLE TO ANY PERSON FOR DAMAGES
26 ARISING FROM ANY PERSON'S INSPECTION OF OR RELIANCE ON THE INSTALLATION
27 RECORDS REQUIRED BY THIS SECTION. THE UNDERGROUND FACILITIES OPERATOR MAY
28 PROVIDE INFORMATION RELATING TO THE NATURE AND LOCATION OF UNDERGROUND
29 FACILITIES TO AN AUTHORIZED PERSON BY ANOTHER MANNER FOR A REASONABLE FEE.

30 Sec. 9. Section 40-360.32, Arizona Revised Statutes, is amended to
31 read:

32 40-360.32. One-call notification center membership; termination

33 Every underground facilities operator who is obligated to locate and
34 mark underground facilities pursuant to section 40-360.22, subsection B,
35 shall be a member of a one-call notification center, either statewide or
36 serving each county in which such entity or person has underground
37 facilities. Each one-call notification center shall establish a limited
38 basis participation membership option, which may be made available to all
39 members, but which must be made available for any member THAT IS NOT A
40 LANDLORD serving less than one thousand customers, ~~or~~ any member irrigation
41 or electrical district OR ANY MEMBER THAT IS A LANDLORD WITH LESS THAN ONE
42 THOUSAND DWELLING UNITS, MOBILE HOMES OR A COMBINATION OF BOTH. An
43 underground facilities operator who elects limited basis participation
44 membership shall provide to the one-call notification center the location of
45 its underground facilities solely by identifying the incorporated cities and

1 towns, or for unincorporated county areas, by identifying the townships, in
2 which it has facilities. The service level provided to limited basis
3 participation members by the one-call notification center is limited to
4 providing excavators with the names and telephone numbers the excavators
5 should contact to obtain facilities location. Each one-call notification
6 center shall establish fair and reasonable fees for limited basis
7 participation members, based on customer count, areas occupied or miles of
8 underground facilities. When any person neglects or refuses to pay fees when
9 due and is in arrears for sixty days, the one-call notification center may
10 terminate the membership of that person without notice and may have a claim
11 for fees and a separate claim for damages for breach of an ancillary
12 agreement. The one-call notification center may refuse to reinstate any
13 person's membership until that person's fee is paid in full.

14 Sec. 10. Legislative intent

15 In this act, it is the intent of the Legislature to set standards of
16 care for the purpose of protecting underground facilities in apartment
17 complexes and mobile home parks from destruction or damage, for promoting the
18 general welfare by preventing death or injury to persons and property in
19 apartment complexes and mobile home parks and for preventing the loss or
20 interruption of essential utility services in apartment complexes and mobile
21 home parks. If a landlord or an excavator complies with the duties set forth
22 in this act in an apartment complex or in a mobile home park, that person is
23 not liable for any death or injury to persons or property or for any economic
24 loss to any person to the extent the conduct is regulated by this article. A
25 person's compliance with this article does not excuse that person from
26 liability for any death or injury to persons or property or for any economic
27 loss to any person to the extent the injury or loss does not arise from the
28 conduct regulated by this article.