

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

# HOUSE BILL 2222

## AN ACT

AMENDING TITLE 33, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1330; AMENDING TITLE 33, CHAPTER 11, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1438; AMENDING TITLE 33, CHAPTER 17, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1906; AMENDING SECTIONS 40-360.21, 40-360.22, 40-360.23, 40-360.24, 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. Title 33, chapter 10, article 2, Arizona Revised Statutes,  
3 is amended by adding section 33-1330, to read:

4 33-1330. Transfer of records on sale

5 ON THE SALE OR OTHER TRANSFER OF AN APARTMENT COMMUNITY AS DEFINED IN  
6 SECTION 40-360.21, THE LANDLORD SHALL DELIVER TO THE BUYER OR OTHER  
7 TRANSFEREE ALL AVAILABLE PLANS, DRAWINGS AND RECORDS PERTAINING TO THE  
8 LOCATION OF ALL UNDERGROUND FACILITIES IN THE PROPERTY, ALL PLANS, DRAWINGS,  
9 SURVEYS AND PLATS OF THE PROPERTY, ALL RECORDS PERTAINING TO TENANT SECURITY  
10 DEPOSITS AND COMPLETE FILES FOR EACH TENANT OF THE PROPERTY AT CLOSING  
11 CONTAINING RENTAL AGREEMENTS AND ALL OTHER DOCUMENTS AND DISCLOSURES REQUIRED  
12 BY THIS CHAPTER THAT ARE IN THE POSSESSION OF THE LANDLORD. A LANDLORD WHO  
13 FAILS TO DELIVER REASONABLY ACCURATE AND MAINTAINED INSTALLATION RECORDS OF  
14 ACTIVE, INACTIVE AND ABANDONED UNDERGROUND FACILITIES INSTALLED AFTER  
15 DECEMBER 31, 2006 IS LIABLE FOR ALL DAMAGES PROXIMATELY CAUSED BY THE  
16 FAILURE, INCLUDING ALL EXPENSES INCURRED BY SUCCESSOR LANDLORDS TO CREATE  
17 SUCH INSTALLATION RECORDS.

18 Sec. 2. Title 33, chapter 11, article 2, Arizona Revised Statutes, is  
19 amended by adding section 33-1438, to read:

20 33-1438. Transfer of records; sale of park

21 ON THE SALE OR OTHER TRANSFER OF A MOBILE HOME PARK, THE LANDLORD SHALL  
22 DELIVER TO THE BUYER OR OTHER TRANSFEREE ALL AVAILABLE PLANS, DRAWINGS AND  
23 RECORDS PERTAINING TO THE LOCATION OF ALL UNDERGROUND FACILITIES IN THE  
24 PARKS, ALL PLANS, DRAWINGS, SURVEYS AND PLATS OF THE PARK, ALL RECORDS  
25 PERTAINING TO TENANT SECURITY DEPOSITS AND COMPLETE FILES FOR EACH TENANT OF  
26 THE PARK AT CLOSING CONTAINING RENTAL AGREEMENTS AND ALL OTHER DOCUMENTS AND  
27 DISCLOSURES REQUIRED BY THIS CHAPTER THAT ARE IN THE POSSESSION OF THE  
28 LANDLORD. A LANDLORD WHO FAILS TO DELIVER REASONABLY ACCURATE AND MAINTAINED  
29 INSTALLATION RECORDS OF ACTIVE, INACTIVE AND ABANDONED UNDERGROUND FACILITIES  
30 INSTALLED AFTER DECEMBER 31, 2006 IS LIABLE FOR ALL DAMAGES PROXIMATELY  
31 CAUSED BY THE FAILURE, INCLUDING ALL EXPENSES INCURRED BY SUCCESSOR LANDLORDS  
32 TO CREATE THE INSTALLATION RECORDS.

33 Sec. 3. Title 33, chapter 17, article 1, Arizona Revised Statutes, is  
34 amended by adding section 33-1906, to read:

35 33-1906. Registration with one-call notification center

36 THIS ARTICLE DOES NOT RELIEVE A LANDLORD OF AN APARTMENT COMMUNITY AS  
37 DEFINED IN SECTION 40-360.21 OR A LANDLORD OF A MOBILE HOME PARK FROM THE  
38 OBLIGATION TO REGISTER WITH A ONE-CALL NOTIFICATION CENTER AS PRESCRIBED BY  
39 SECTION 40-360.32.

40 Sec. 4. Section 40-360.21, Arizona Revised Statutes, is amended to  
41 read:

42 40-360.21. Definitions

43 In this article, unless the context otherwise requires:

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

4           2. "APARTMENT COMMUNITY" MEANS ANY REAL PROPERTY THAT HAS ONE OR MORE  
5 STRUCTURES AND CONTAINS FIVE OR MORE DWELLING UNITS FOR RENT OR LEASE THAT  
6 ARE SUBJECT TO TITLE 33, CHAPTER 10. FOR THE PURPOSES OF THIS PARAGRAPH  
7 "DWELLING UNIT" HAS THE SAME MEANING PRESCRIBE IN SECTION 33-1310.

8           ~~2-~~ 3. "Building official" means the officer employed by a political  
9 subdivision of this state and charged with the administration and enforcement  
10 of a building code to regulate the quality, type of material and workmanship  
11 of construction of buildings or structures.

12           ~~3-~~ 4. "Careful and prudent manner" means conducting AN excavation in  
13 such a way that when ~~it is within~~ THE EXCAVATION IS LESS THAN OR EQUAL TO  
14 twenty-four inches ~~of the~~ FROM AN underground facility ~~located and~~ THAT IS  
15 marked ~~by the underground facilities operator, by~~ WITH stakes, ~~OR~~ paint or  
16 in some customary manner, the ~~exact location is manually determined~~ FACILITY  
17 IS CAREFULLY EXPOSED WITH HAND TOOLS, and the uncovered facility is supported  
18 and protected.

19           5. "CAREFULLY" MEANS ACTING WITH REASONABLE CARE UNDER THE  
20 CIRCUMSTANCES.

21           ~~4-~~ 6. "Cross culverts or similar roadway drainage facilities" means  
22 transverse drainage structures with both ends or openings visible and  
23 includes box culverts, drainage pipes or other covered structures.

24           ~~5-~~ 7. "Detectible underground location device" means any device that  
25 is installed underground and that is capable of being detected from above  
26 ground with an electronic locating device.

27           ~~6-~~ 8. "Excavation" means any operation in which earth, rock or other  
28 material in the ground is moved, removed or otherwise displaced by means or  
29 use of any tools, equipment or explosives and includes, without limitation,  
30 grading, trenching, digging, ditching, drilling, augering, boring,  
31 tunnelling, scraping, cable or pipe plowing and driving.

32           ~~7-~~ 9. "Implied easement" means any easement or right-of-way on  
33 private property required to provide utility services by means of underground  
34 facilities in property of the owner requesting such service.

35           ~~8-~~ 10. "Inactive" means:

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

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

41           ~~9-~~ 11. "Installation records" of an underground facility means maps,  
42 drawings, diagrams, surveys, schematics, illustrations, sketches or any other  
43 depictions or descriptions of an underground facility that reflect the  
44 location at the time of installation of the underground facility and any  
45 surface extensions in a reasonably accurate manner.

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

4           ~~10.~~ 13. "Locator strip" means a type of detectible underground  
5 location device that consists of a plastic or other durable material ribbon  
6 containing a material capable of being detected from above ground with an  
7 electronic locating device and color coded by type of underground facility.

8           ~~11.~~ 14. "Locator wire" means a type of detectible underground location  
9 device that consists of a copper wire or metallic, conductive, noncorrosive  
10 trace wire capable of being detected from above ground with an electronic  
11 locating device.

12           15. "MOBILE HOME PARK" HAS THE SAME MEANING PRESCRIBED IN SECTION  
13 33-1409.

14           ~~12.~~ 16. "One-call notification center" means an organization of owners  
15 or operators of underground facilities that provides a telephone number  
16 notification service for the purpose of receiving and distributing to its  
17 members advance notifications from persons regarding planned excavations.

18           ~~13.~~ 17. "Person" means any individual, firm, joint venture,  
19 partnership, corporation, association, municipality, governmental unit,  
20 department or agency and shall include any trustee, receiver, assignee or  
21 personal representative thereof.

22           ~~14.~~ 18. "Routine road maintenance grading" means the routine grading  
23 or resurfacing of the concrete, asphaltic or composite surface but not the  
24 subbase of a roadway by the state or a political subdivision of the state for  
25 the purpose of maintaining the surface condition of the road and includes  
26 recovery of material from a borrow ditch.

27           ~~15.~~ 19. "Stakes, ~~OR~~ paint or in some customary manner" means marking  
28 the location of an underground facility by the colors established by the  
29 commission. These colors shall be restricted to the underground facility  
30 location.

31           ~~16.~~ 20. "Underground facilities operator" means a public utility,  
32 municipal corporation, LANDLORD or other person having the right to bury  
33 underground facilities in any public street, alley, right-of-way dedicated to  
34 the public use or PUBLIC utility easement, IN ANY APARTMENT COMMUNITY OR  
35 MOBILE HOME PARK or pursuant to any express or implied private property  
36 easement. Underground facilities operator does not include a homeowner that  
37 owns a sewer facility in a public street, alley, right-of-way dedicated to  
38 public use or PUBLIC utility easement.

39           ~~17.~~ 21. "Underground facility" means any item of personal property  
40 that is buried or placed below ground for use in connection with the storage  
41 or conveyance of water, sewage, electronic, telephonic, ~~or~~ telegraphic  
42 communications, electric energy, oil, gas or other substances, and shall  
43 include but not be limited to pipes, sewers, conduits, cables, valves, lines,  
44 wires, manholes, attachments and those portions of poles and their  
45 attachments below ground except cross culverts or similar roadway drainage

1 facilities and landscape irrigation systems of two inches in diameter or  
2 less.

3 22. "WORKING DAY" MEANS EVERY DAY EXCLUDING SATURDAY OF EACH WEEK, THE  
4 FOURTH FRIDAY IN NOVEMBER, SUNDAY OF EACH WEEK AND OTHER LEGAL HOLIDAYS AS  
5 PRESCRIBED IN SECTION 1-301.

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

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

14 A. A person shall not make or begin any excavation in any public  
15 street, alley, right-of-way dedicated to the public use or PUBLIC utility  
16 easement, in any express or implied private property utility easement, ~~OR IN~~  
17 ~~ANY APARTMENT COMMUNITY OR MOBILE HOME PARK~~ without first determining whether  
18 underground facilities will be encountered, and if so where they are located  
19 from each and every underground facilities operator and taking measures for  
20 control of the facilities in a careful and prudent manner. FOR ALL  
21 EXCAVATIONS IN AN APARTMENT COMMUNITY OR MOBILE HOME PARK, THE EXCAVATOR  
22 SHALL INFORM THE LANDLORD AS PROMPTLY AS PRACTICAL THAT THE EXCAVATOR INTENDS  
23 TO SUBMIT AN INQUIRY TO THE LANDLORD THAT WILL TRIGGER THE LANDLORD'S  
24 OBLIGATIONS PROVIDED BY SUBSECTION B OF THIS SECTION AND THE INQUIRY ITSELF  
25 SHALL BE MADE BY CERTIFIED MAIL TO THE LANDLORD, USING A FORM PREPARED BY A  
26 ONE-CALL NOTIFICATION CENTER. THE INQUIRY TO A LANDLORD MAY BE MADE BY A  
27 ONE-CALL NOTIFICATION CENTER FOR A REASONABLE FEE TO THE EXCAVATOR.

28 B. ~~Every underground facilities operator shall file with the~~  
29 ~~corporation commission the job title, address and telephone number of the~~  
30 ~~person or persons from whom the necessary information may be obtained. Such~~  
31 ~~person or persons shall be readily available during established business~~  
32 ~~hours. The information on file shall also include the name, address and~~  
33 ~~telephone number of each one call notification center to which the~~  
34 ~~underground facilities operator belongs. EXCEPT AS OTHERWISE PROVIDED IN~~  
35 ~~THIS SUBSECTION, upon receipt of THE EXCAVATOR'S inquiry or notice from the~~  
36 ~~excavator, the underground facilities operator shall respond as promptly as~~  
37 ~~practical, but in no event later than two working days, by CAREFULLY marking~~  
38 ~~such facility with stakes, OR paint or in some customary manner. A LANDLORD~~  
39 ~~SHALL RESPOND IN THE SAME MANNER AND AS PROMPTLY AS PRACTICAL, BUT IN NO~~  
40 ~~EVENT LATER THAN TEN WORKING DAYS. No person shall begin excavating before~~  
41 ~~the location and marking are complete or the excavator is notified that~~  
42 ~~marking is unnecessary. If the excavator consents, an underground facilities~~  
43 ~~operator may notify the A one-call notification center that marking is~~  
44 ~~unnecessary pursuant to a method established by the one-call notification~~  
45 ~~center. An underground facilities operator may delegate ASSIGN any marking~~

1 or notification obligations required by this subsection to an agent or  
2 servant of the underground facilities operator. An underground facilities  
3 operator may notify the excavator that marking is unnecessary pursuant to any  
4 mutually agreeable method.

5 C. On a timely request by the underground facilities operator, the  
6 excavator shall mark the boundaries of the ~~location~~ AREA requested to be  
7 excavated in accordance with a color code designated by the commission or by  
8 applicable custom or standard in the industry. A request under this  
9 subsection for excavator marking does not alter any other requirement of this  
10 section.

11 D. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, A PERSON SHALL  
12 NOT BEGIN EXCAVATING IN ANY APARTMENT COMMUNITY OR MOBILE HOME PARK BEFORE  
13 THE LANDLORD HAS COMPLETED MARKING THE UNDERGROUND FACILITY OR THE EXCAVATOR  
14 IS NOTIFIED THAT MARKING IS UNNECESSARY. AFTER UNDERGROUND FACILITY MARKINGS  
15 ARE COMPLETE OR THE EXCAVATOR HAS RECEIVED NOTICE THAT MARKING IS  
16 UNNECESSARY, AN EXCAVATOR SHALL NOTIFY THE LANDLORD IF ANY OF THE FOLLOWING  
17 CONDITIONS EXIST:

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

21 2. THE EXCAVATOR HAS CONCERNS REGARDING THE ACCURACY AND MEANING OF  
22 THE MARKS.

23 3. THE EXCAVATOR ENCOUNTERS AN UNDERGROUND FACILITY THAT HAS NOT BEEN  
24 MARKED.

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

27 E. FOR EVERY EXCAVATION IN AN APARTMENT COMMUNITY OR MOBILE HOME PARK  
28 WHERE THE EXCAVATION METHOD IS BORING:

29 1. EVERY UNDERGROUND FACILITIES OPERATOR SHALL BE NOTIFIED OF THIS  
30 METHODOLOGY.

31 2. THE EXCAVATOR SHALL ENSURE THAT SUFFICIENT CLEARANCE IS MAINTAINED  
32 BETWEEN THE BORE PATH AND ANY MARKED UNDERGROUND FACILITY.

33 3. THE EXCAVATOR SHALL VISUALLY CHECK THE DRILL HEAD EACH TIME IT  
34 PASSES THROUGH POTHOLES, ENTRANCES AND EXIT PITS, INCLUDING DURING PULLBACK.

35 4. EACH UNDERGROUND FACILITIES OPERATOR SHALL BE GIVEN A REASONABLE  
36 OPPORTUNITY TO INSPECT ITS FACILITY BEFORE AND DURING THE BORING OPERATION.

37 F. IF A LANDLORD FAILS TO RESPOND TO AN EXCAVATOR'S REQUEST IN A  
38 MANNER REQUIRED BY THIS ARTICLE, AN EXCAVATOR DOES NOT VIOLATE THIS ARTICLE  
39 AND FULFILLS THE STANDARD OF CARE OF A REASONABLY PRUDENT EXCAVATOR IF THE  
40 EXCAVATOR COMPLIES WITH ALL OF THE FOLLOWING:

41 1. ONE WORKING DAY BEFORE CONDUCTING THE EXCAVATION, THE EXCAVATOR  
42 NOTIFIES THE LANDLORD IN WRITING OR BY FAX THAT THE EXCAVATOR HAS DETERMINED  
43 THAT THE ACTS OR OMISSIONS OF THE LANDLORD IS A REFUSAL TO RESPOND TO AN  
44 EXCAVATOR'S REQUEST.

1           2. THE EXCAVATOR INVESTIGATES FOR THE PRESENCE OF VISIBLE AND OBVIOUS  
2 EVIDENCE THAT WOULD ALERT A REASONABLE EXCAVATOR TO THE PRESENCE OF AN  
3 UNMARKED UNDERGROUND FACILITY WITHIN THE BOUNDARIES OF THE AREA TO BE  
4 EXCAVATED.

5           3. THE EXCAVATOR CAREFULLY LOCATES ALL UNMARKED FACILITIES THAT ARE  
6 KNOWN TO EXIST DUE TO THE EXCAVATOR'S INVESTIGATION PERFORMED PURSUANT TO  
7 PARAGRAPH 2 OF THIS SUBSECTION USING ONE OF THE METHODS LISTED IN SUBSECTION  
8 G OF THIS SECTION AND CAREFULLY MARKS THE FACILITIES WITH STAKES OR PAINT OR  
9 IN SOME CUSTOMARY MANNER. IN ADDITION, WHEN A LANDLORD PROVIDES VERBAL OR  
10 WRITTEN INFORMATION REGARDING THE LOCATION OF UNDERGROUND FACILITIES THAT ARE  
11 WITHIN THE BOUNDARIES OF THE AREA TO BE EXCAVATED, THE EXCAVATOR CAREFULLY  
12 LOCATES ALL SUCH IDENTIFIED FACILITIES USING ONE OF THE METHODS LISTED IN  
13 SUBSECTION G OF THIS SECTION AND CAREFULLY MARKS THE FACILITIES WITH STAKES  
14 OR PAINT OR IN SOME CUSTOMARY MANNER.

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

17           5. THE EXCAVATOR SHALL NOT EXCAVATE IF THE EXCAVATOR RECEIVES A  
18 RESPONSE FROM THE LANDLORD THAT NOTIFIES OR ALERTS THE EXCAVATOR TO THE  
19 PRESENCE OF A MISTAKE OR AN INTENTION BY THE LANDLORD TO RESPOND IN A MANNER  
20 THAT IS CONSISTENT WITH THIS ARTICLE, EVEN IF THE RESPONSE WILL BE UNTIMELY.  
21 A LANDLORD'S DELAY, FAILURE TO RESPOND TO A LOCATION REQUEST, FAILURE TO MARK  
22 OR OTHER NONCOMPLIANCE IS NOT EXCUSED BY THE EXCAVATOR'S OR LANDLORD'S  
23 COMPLIANCE WITH THIS SUBSECTION.

24           ~~D.~~ G. Except as otherwise provided in this section, in performing the  
25 marking required by subsection B of this section, the underground facilities  
26 operator of an underground facility installed after December 31, 1988 in a  
27 public street, alley or right-of-way dedicated to public use OR PUBLIC  
28 UTILITY EASEMENT, but not including any express or implied private property  
29 utility easement, shall CAREFULLY locate the facility by referring to  
30 installation records of the facility THAT ARE IN THE POSSESSION OF THE  
31 UNDERGROUND FACILITY OPERATOR and utilizing one of the following methods:

- 32           1. Vertical line or facility markers.
- 33           2. Locator strip or locator wire.
- 34           3. Signs or permanent markers.
- 35           4. Electronic or magnetic location or tracing techniques.
- 36           5. Electronic or magnetic sensors or markers.
- 37           6. Metal sensors or sensing techniques.
- 38           7. Sonar techniques.
- 39           8. Underground electrical or radio transmitters.
- 40           9. Manual location techniques, including pot-holing.
- 41           10. Surface extensions of underground facilities.
- 42           11. Any other surface or subsurface location technique that is at least  
43 as accurate as the other marking methods in this subsection and that is not  
44 prohibited by the commission or by federal or state law. THIS PARAGRAPH DOES

1 NOT OBLIGATE AN UNDERGROUND FACILITIES OPERATOR TO BE AWARE OF AND UTILIZE  
2 EVERY SURFACE OR SUBSURFACE LOCATION TECHNIQUE AVAILABLE.

3 ~~E.~~ H. Except as otherwise provided in this section, for an  
4 underground facility other than one installed after December 31, 1988, in a  
5 public street, alley or right-of-way dedicated to public use OR PUBLIC  
6 UTILITY EASEMENT, in performing the marking required by subsection B of this  
7 section, the underground facilities operator may refer to installation  
8 RECORDS or other records relating to the facility to assist in locating the  
9 facility and shall CAREFULLY locate the facility utilizing one of the methods  
10 listed under subsection ~~D-~~ G of this section.

11 ~~F.~~ I. If an underground facilities operator is unable to complete the  
12 location and marking within the time period provided by subsection B of this  
13 section, the facilities operator shall satisfy the requirements of this  
14 section by providing prompt notice of these facts to the excavator and  
15 assigning one or more representatives to be present on the excavation site at  
16 all pertinent times as requested by the excavator to provide facility  
17 location services until the facilities have been located and marked OR THE  
18 EXCAVATOR IS NOTIFIED THAT MARKING IS UNNECESSARY PURSUANT TO ANY MUTUALLY  
19 AGREEABLE METHOD. A PERSON THAT RECEIVES NOTICE FROM THE UNDERGROUND  
20 FACILITIES OPERATOR OF THESE FACTS SHALL NOT BEGIN EXCAVATING BEFORE THE  
21 UNDERGROUND FACILITIES OPERATOR HAS COMPLETED MARKING THE UNDERGROUND  
22 FACILITY OR THE EXCAVATOR IS NOTIFIED THAT MARKING IS UNNECESSARY. EXCEPT AS  
23 PROVIDED IN SUBSECTION J OF THIS SECTION, the underground facilities operator  
24 shall bear all of its own ~~costs~~ EXPENSES associated with assigning  
25 representatives. ~~If representatives are assigned under this subsection, the~~  
26 ~~excavator is not responsible or liable for damage to or repair of the~~  
27 ~~underground facilities operator's underground facility while acting under the~~  
28 ~~direction of an assigned representative of the underground facilities~~  
29 ~~operator, unless the damage or need for repair was caused by the excavator's~~  
30 ~~negligence.~~

31 ~~G.~~ J. The marking required by subsection B of this section is valid  
32 for fifteen WORKING days from the date of the marking, ~~excluding Saturdays,~~  
33 ~~Sundays and other legal holidays.~~ If the excavation will continue past the  
34 validity period of the marks as provided by this subsection, the excavator  
35 shall notify the underground facilities operator or an organization  
36 designated by the underground facilities operator at least two WORKING  
37 days, ~~excluding Saturdays, Sundays and other legal holidays,~~ before the end  
38 of the validity period. All requests for facility markings and requests to  
39 extend the validity period of the markings shall be for the purpose of  
40 excavating within the validity period of the markings. An excavator that  
41 requests facility markings shall limit the request to an area that can  
42 reasonably be excavated within the validity period of the markings. A person  
43 who violates this subsection is liable to the one-call notification center  
44 and to all affected underground facilities operators for any ~~resulting~~



1 damages PROXIMATELY CAUSED BY THE VIOLATION, ~~costs and~~ INCLUDING ECONOMIC  
2 LOSS ~~expenses~~.

3 ~~H.~~ K. Nothing in this section shall be construed to prevent an  
4 excavator and an underground facilities operator from holding a  
5 preconstruction conference regarding marking and location of underground  
6 facilities and entering into a mutually agreeable written schedule FOR  
7 MARKING OR EXCAVATING or written arrangement THAT MAY CONSTRAIN THE  
8 EXCAVATION METHODS OR THAT MAY PROVIDE FOR THE DELIVERY OF INSTALLATION  
9 RECORDS TO THE EXCAVATOR for THE PURPOSE OF satisfying the requirements of  
10 this section, except that this subsection does not eliminate the excavator's  
11 obligation to notify the underground facilities operator to locate and mark  
12 excavation sites under subsection B of this section based on the actual  
13 construction schedule.

14 ~~I.~~ L. For abandoned and apparently abandoned underground facilities:  
15 1. The underground facilities operator shall notify the excavator  
16 whether the facility is active or abandoned. An inactive facility shall be  
17 considered active for purposes of this subsection. This section does not  
18 obligate any person to represent that an underground sewer facility in any  
19 public street, alley, right-of-way dedicated to public use or PUBLIC utility  
20 easement is abandoned if it was installed on or before December 31, 2005 and  
21 it is not owned by an underground facilities operator of a sewer system.  
22 THIS PARAGRAPH DOES NOT OBLIGATE A LANDLORD TO REPRESENT THAT AN UNDERGROUND  
23 FACILITY IN ANY APARTMENT COMMUNITY OR MOBILE HOME PARK IS ABANDONED IF IT  
24 WAS INSTALLED BEFORE JANUARY 1, 2007.

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

41 3. For the purposes of this article, if an excavator encounters an  
42 apparently abandoned underground facility, the excavator shall not treat the  
43 underground facility as abandoned until the excavator has received  
44 notification that the underground facility is abandoned pursuant to paragraph  
45 1 of this subsection or has notified the underground ~~facility~~ FACILITIES

1 operator of the apparent abandonment and has received verification of  
2 abandonment pursuant to paragraph 2 of this subsection.

3 4. EACH ONE-CALL NOTIFICATION CENTER MAY ESTABLISH A METHOD FOR  
4 REIMBURSING THE VERIFYING UNDERGROUND FACILITIES OPERATOR FOR THE EXPENSES  
5 INCURRED UNDER PARAGRAPH 2 OF THIS SUBSECTION. THE REIMBURSEMENT METHOD  
6 SHALL NOT INCLUDE ANY CHARGE OR EXPENSE TO THE EXCAVATOR. A LANDLORD THAT  
7 FAILS TO ADVISE OR REPRESENT THAT AN UNDERGROUND FACILITY IS ABANDONED  
8 PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION, WHOSE UNDERGROUND FACILITY IS  
9 VERIFIED AS ABANDONED PURSUANT TO THIS SUBSECTION AND WHO HAS NOT FILED  
10 INFORMATION WITH A ONE-CALL NOTIFICATION CENTER IS LIABLE TO THE ONE-CALL  
11 NOTIFICATION CENTER AND TO ALL AFFECTED UNDERGROUND FACILITIES OPERATORS AND  
12 EXCAVATORS FOR THE COST OF VERIFYING ABANDONMENT TOGETHER WITH ANY DAMAGES,  
13 INCLUDING ECONOMIC LOSS, PROXIMATELY CAUSED BY THE VIOLATION.

14 ~~J~~ M. All new and active underground facilities installed in any real  
15 property after December 31, 2005 shall be installed with a detectible  
16 underground location device unless the facility is capable of being detected  
17 from above ground with an electronic locating device OR THE FACILITY IS  
18 INSTALLED WITHIN SINGLE FAMILY RESIDENTIAL PROPERTY AND IS BENEATH A POOL,  
19 PERMANENT POOL DECKING THAT IS LESS THAN FORTY-EIGHT INCHES FROM THE POOL OR  
20 A PERMANENT BUILDING. A person who violates this subsection is subject to a  
21 civil penalty in an amount not to exceed five thousand dollars. The building  
22 official shall administer and enforce this subsection for all underground  
23 facilities except those that are installed for a public utility or municipal  
24 corporation. Any penalties received by the building official shall be  
25 deposited in the municipality's or political subdivision's general fund, as  
26 applicable.

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

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

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

41 3. This subsection does not obligate an underground facilities  
42 operator of a sewer system to locate and mark the underground sewer  
43 facilities owned by another person if the customer receiving sewer service  
44 from the underground sewer facility refuses to grant permission to the  
45 underground facilities operator of a sewer system to access the real property

1 for the purpose of ascertaining the location of the underground sewer  
2 facility in any public street, alley, right-of-way dedicated to public use or  
3 PUBLIC UTILITY easement.

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

7 P. FOR EVERY LANDLORD:

8 1. FOR THE PURPOSES OF THIS ARTICLE, EACH LANDLORD IS RESPONSIBLE FOR  
9 MARKING THE UNDERGROUND FACILITIES OPERATED BY THE LANDLORD PURSUANT TO  
10 SUBSECTION B OF THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH,  
11 "UNDERGROUND FACILITIES OPERATED BY THE LANDLORD" INCLUDES EVERY UNDERGROUND  
12 FACILITY THAT IS IN AN APARTMENT COMMUNITY OR A MOBILE HOME PARK AND THAT:

13 (a) DISCHARGES INTO AN UNDERGROUND FACILITY THAT IS OPERATED BY THE  
14 LANDLORD.

15 (b) IS SUPPLIED BY AN UNDERGROUND FACILITY THAT IS OPERATED BY THE  
16 LANDLORD.

17 (c) IS NOT OPERATED BY A PUBLIC UTILITY OR MUNICIPAL CORPORATION.

18 2. IF A LANDLORD IS UNABLE TO COMPLETE THE LOCATION AND MARKING WITHIN  
19 THE TIME PERIOD PROVIDED BY SUBSECTION B OF THIS SECTION, THE LANDLORD SHALL  
20 SATISFY ITS OBLIGATIONS IN THE MANNER PROVIDED BY SUBSECTION I OF THIS  
21 SECTION. NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PREVENT THE  
22 EXCAVATOR AND THE LANDLORD FROM ENTERING INTO A MUTUALLY AGREEABLE WRITTEN  
23 SCHEDULE OR WRITTEN ARRANGEMENT FOR SATISFYING THE REQUIREMENTS OF THIS  
24 SECTION IN THE MANNER PROVIDED BY SUBSECTION K OF THIS SECTION.

25 3. IN PERFORMING THE MARKING REQUIRED BY THIS SUBSECTION FOR AN  
26 UNDERGROUND FACILITY INSTALLED AFTER DECEMBER 31, 2006, THE LANDLORD SHALL  
27 CAREFULLY LOCATE THE FACILITY BY REFERRING TO INSTALLATION RECORDS OF THE  
28 FACILITY THAT ARE IN THE POSSESSION OF THE LANDLORD AND BY USING ONE OF THE  
29 METHODS LISTED IN SUBSECTION G OF THIS SECTION.

30 4. IN PERFORMING THE MARKING REQUIRED BY THIS SUBSECTION FOR AN  
31 UNDERGROUND FACILITY INSTALLED BEFORE JANUARY 1, 2007, THE LANDLORD MAY REFER  
32 TO INSTALLATION RECORDS OR OTHER RECORDS RELATING TO THE FACILITY TO ASSIST  
33 IN LOCATING THE FACILITY AND SHALL LOCATE THE FACILITY USING ONE OF THE  
34 METHODS LISTED IN SUBSECTION G OF THIS SECTION.

35 5. SUBJECT TO THE AVAILABILITY OF MONIES, LANDLORDS MAY APPLY FOR  
36 GRANTS FROM A GRANT ACCOUNT ESTABLISHED FOR THE PURPOSE OF MEETING THE  
37 STANDARDS PRESCRIBED BY THIS ARTICLE AND FOR THE PURPOSE OF CREATING  
38 INSTALLATION RECORDS FOR FACILITIES THAT ARE NOT REQUIRED TO BE CREATED OR  
39 MAINTAINED BY THIS ARTICLE.

40 6. NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE, A LANDLORD IS  
41 NOT LIABLE FOR ANY COSTS OR EXPENSES, INCLUDING DAMAGE TO THIRD PARTIES,  
42 RESULTING FROM DAMAGE TO AN UNDERGROUND SEWER FACILITY OWNED BY THE LANDLORD  
43 AND LOCATED WITHIN A PUBLIC RIGHT-OF-WAY IF THE DAMAGE WAS NOT CAUSED BY  
44 EITHER:

1 (a) THE LANDLORD'S OR TENANT'S ACTIONS.

2 (b) THE LANDLORD'S OR TENANT'S REFUSAL TO GRANT ACCESS TO THE OPERATOR  
3 OF THE SEWER SYSTEM THAT CONNECTS TO THE LANDLORD'S UNDERGROUND SEWER  
4 FACILITY.

5 7. THIS ARTICLE DOES NOT OBLIGATE A LANDLORD TO LOCATE AND MARK A  
6 FACILITY OWNED BY A TENANT IF THE TENANT OWNS THE MOBILE HOME, THE TENANT  
7 REFUSES TO GRANT PERMISSION TO THE LANDLORD TO ACCESS THE MOBILE HOME AND THE  
8 FACILITY CANNOT BE LOCATED WITHOUT ACCESSING THE MOBILE HOME.

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

12 9. THIS SUBSECTION DOES NOT OBLIGATE A LANDLORD TO MAINTAIN, CLEAN OR  
13 UNSTOP UNDERGROUND FACILITIES OWNED BY ANOTHER PERSON.

14 Q. ALL INQUIRIES AND NOTICES TO A LANDLORD SHALL BE MADE TO THE  
15 ADDRESS ON FILE AT A ONE-CALL NOTIFICATION CENTER. NOTWITHSTANDING ANY OTHER  
16 LAW, IF THE LANDLORD HAS NOT FILED INFORMATION AT THE ONE-CALL NOTIFICATION  
17 CENTER, THE EXCAVATOR DOES NOT VIOLATE THIS ARTICLE AND FULFILLS THE STANDARD  
18 OF CARE OF A REASONABLY PRUDENT EXCAVATOR IF THE EXCAVATOR MAKES THE INQUIRY  
19 OR NOTICE TO THE PROPERTY OWNER OF RECORD ACCORDING TO THE RECORDS OF THE  
20 COUNTY ASSESSOR IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

21 Sec. 6. Section 40-360.23, Arizona Revised Statutes, is amended to  
22 read:

23 40-360.23. Making excavation in careful, prudent manner;  
24 liability for negligence; notice; response;  
25 obliteration of marks; representative availability

26 A. EXCEPT AS OTHERWISE PROVIDED IN SECTION 40-360.28, SUBSECTION E,  
27 obtaining information as required by this article does not excuse any person  
28 making any excavation from doing so in a careful and prudent manner, nor  
29 shall it excuse such persons from liability for any damage or injury  
30 resulting from ~~his~~ THEIR negligence.

31 B. EXCEPT AS OTHERWISE PROVIDED IN SECTION 40-360.22, SUBSECTION D,  
32 after markings have been made pursuant to section 40-360.22, an excavator  
33 shall notify either the underground facilities operator or an organization  
34 designated by the underground facilities operator if the excavator encounters  
35 an underground facility that has not been located and marked or has been  
36 marked in the wrong location.

37 ~~C. Unless it would interfere with compliance with commission rules or~~  
38 ~~requirements regarding maintenance or restoration of service and repair of~~  
39 ~~facilities, the underground facilities operator shall immediately respond to~~  
40 ~~a notification under subsection B of this section for emergencies involving~~  
41 ~~injury or damage.~~

42 ~~D.~~ C. An excavator or an underground facilities operator shall not  
43 move or obliterate markings made pursuant to ~~section 40-360.22, subsection B~~  
44 THIS ARTICLE or fabricate markings in an unmarked location for the purpose of

1 concealing or avoiding liability for a violation of or noncompliance with  
2 this article.

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

13 Sec. 7. Section 40-360.24, Arizona Revised Statutes, is amended to  
14 read:

15 40-360.24. Notice of damage to underground facility

16 A. In the event of any damage to or dislocation of any underground  
17 facility or detectible underground location device in connection with any  
18 excavation the person responsible for the excavation operations shall  
19 immediately notify the underground facilities operator and shall not attempt  
20 any repair, ~~except temporary emergency repairs,~~ to the damaged facility or  
21 device, ~~except that~~ THE TEMPORARY EMERGENCY REPAIRS ALLOWED BY THIS SECTION.

22 B. Temporary emergency repairs shall not be made by an  
23 excavator, ~~without the underground facilities operator's consent,~~ to a public  
24 utility's or municipal corporation's natural gas, electric, propane,  
25 hazardous liquid, communication, cable television, sewer system, wastewater  
26 or water facilities WITHOUT THE CONSENT OF THE UNDERGROUND FACILITIES  
27 OPERATOR.

28 C. The excavation shall be left open until the arrival of  
29 representatives of the underground facilities operator. Upon receipt of  
30 notice, the underground facilities operator shall dispatch its  
31 representatives promptly, but in no event later than two working days, to  
32 examine the underground facility, and, if necessary, effect repairs. UNLESS  
33 IT WOULD INTERFERE WITH COMPLIANCE WITH COMMISSION RULES OR REQUIREMENTS  
34 REGARDING MAINTENANCE OR RESTORATION OF SERVICE AND REPAIR OF FACILITIES, THE  
35 UNDERGROUND FACILITIES OPERATOR SHALL IMMEDIATELY RESPOND TO A NOTIFICATION  
36 FOR EMERGENCIES INVOLVING INJURY OR DAMAGE.

37 Sec. 8. Section 40-360.25, Arizona Revised Statutes, is amended to  
38 read:

39 40-360.25. Injunction; mandamus

40 A. If any person is engaging in excavation in ~~a negligent or unsafe~~  
41 ~~manner which~~ VIOLATION OF THIS ARTICLE AND THE VIOLATION has resulted in or  
42 is likely to result in damage to an underground facility or if any person is  
43 proposing to use procedures for excavation ~~which~~ IN VIOLATION OF THIS ARTICLE  
44 THAT are likely to result in damage to an underground facility, ~~the owner of~~  
45 ~~such facility~~ ANY AFFECTED UNDERGROUND FACILITIES OPERATOR may commence an

1 action in the superior court in the county in which the excavation is  
2 occurring or is to occur, or in which the person complained of has its  
3 principal place of business or resides, for the purpose of having such  
4 ~~negligent or unsafe excavation~~ ACT OR OMISSION stopped and prevented, either  
5 by mandamus or injunction.

6 B. IF ANY LANDLORD IN VIOLATION OF THIS ARTICLE FAILS TO FILE  
7 INFORMATION WITH A ONE-CALL NOTIFICATION CENTER, KNOWINGLY FAILS TO UPDATE  
8 THE INFORMATION, FAILS TO LOCATE OR MARK AN UNDERGROUND FACILITY IN A MANNER  
9 REQUIRED BY THIS ARTICLE OR FAILS TO PREPARE AND MAINTAIN INSTALLATION  
10 RECORDS REQUIRED BY THIS ARTICLE, ANY AFFECTED UNDERGROUND FACILITIES  
11 OPERATOR, ANY HARMED EXCAVATOR OR A ONE-CALL NOTIFICATION CENTER MAY COMMENCE  
12 AN ACTION IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE FACILITY IS  
13 SITUATED OR IN WHICH THE PERSON COMPLAINED OF HAS ITS PRINCIPAL PLACE OF  
14 BUSINESS OR RESIDES, FOR THE PURPOSE OF HAVING SUCH ACTS OR OMISSIONS STOPPED  
15 AND PREVENTED, EITHER BY MANDAMUS OR INJUNCTION. A LANDLORD IS DEEMED TO  
16 HAVE KNOWLEDGE OF THE FILING REQUIREMENTS TEN WORKING DAYS AFTER A COPY OF  
17 SECTION 40-360.32, SUBSECTION A IS SENT BY CERTIFIED MAIL TO THE PROPERTY  
18 OWNER OF RECORD ACCORDING TO THE RECORDS OF THE COUNTY ASSESSOR IN THE COUNTY  
19 IN WHICH THE PROPERTY IS LOCATED.

20 C. Such persons as the court may deem necessary or proper may be  
21 joined as parties.

22 D. The final judgment in any such action or proceeding shall either  
23 dismiss the action or direct that the writ of mandamus or injunction issue or  
24 be made permanent as prayed for in the complaint. If the court finds that  
25 the person complained of has repeatedly engaged in negligent or unsafe  
26 excavation ~~resulting in damage to underground facilities after the effective~~  
27 ~~date of this article,~~ OR HAS KNOWINGLY VIOLATED THIS ARTICLE WITHOUT JUST  
28 CAUSE, the court shall issue such order and take such equitable action as  
29 shall be reasonable and appropriate to prevent continuance by such person of  
30 such ~~negligent or unsafe operations~~ ACT OR OMISSION.

31 Sec. 9. Section 40-360.26, Arizona Revised Statutes, is amended to  
32 read:

33 40-360.26. Damage of underground facility; liability to owner;  
34 homeowner exemption

35 A. If any underground facility is damaged by any person in violation  
36 of this article as a result of failing to obtain information as to its  
37 location, failing to take measures for protection of the facilities or  
38 failing to excavate in a careful and prudent manner, the person is liable to  
39 the owner of the underground facility for the total cost of the repair of the  
40 facility.

41 B. A homeowner engaging in excavating in an express or implied private  
42 property utility easement across property owned by the homeowner is not  
43 liable to the owner or operator of the underground facility damaged by the  
44 homeowner pursuant to this section if the damaged underground facility is not  
45 buried or placed below ground in accordance with the applicable standards, if

1 the underground facility is not located within the easement or if the  
2 homeowner engaged in the excavation has complied with section 40-360.22.

3 C. NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE, A HOMEOWNER IS  
4 NOT LIABLE FOR ANY COSTS OR EXPENSES, INCLUDING DAMAGE TO THIRD PARTIES,  
5 RESULTING FROM DAMAGE TO AN UNDERGROUND FACILITY OWNED BY THE HOMEOWNER BUT  
6 LOCATED WITHIN A PUBLIC RIGHT-OF-WAY IF THE DAMAGE WAS NOT CAUSED BY THE  
7 HOMEOWNER'S ACTIONS OR BY THE HOMEOWNER'S REFUSAL TO GRANT PERMISSION TO THE  
8 UNDERGROUND FACILITIES OPERATOR OF A SEWER SYSTEM TO ACCESS THE REAL PROPERTY  
9 FOR THE PURPOSE OF ASCERTAINING THE LOCATION OF THE UNDERGROUND SEWER  
10 FACILITY. A TENANT IS NOT LIABLE FOR ANY COSTS OR EXPENSES, INCLUDING DAMAGE  
11 TO THIRD PARTIES, RESULTING FROM DAMAGE TO AN UNDERGROUND FACILITY OWNED BY  
12 THE TENANT BUT LOCATED WITHIN A MOBILE HOME PARK IF THE DAMAGE WAS NOT CAUSED  
13 BY THE TENANT'S ACTIONS OR BY THE TENANT'S REFUSAL TO GRANT PERMISSION TO THE  
14 LANDLORD TO ACCESS THE MOBILE HOME FOR THE PURPOSE OF ASCERTAINING THE  
15 LOCATION OF THE UNDERGROUND FACILITY.

16 Sec. 10. Section 40-360.27, Arizona Revised Statutes, is amended to  
17 read:

18 40-360.27. Liability for attorney fees; administrative costs  
19 and expenses

20 The prevailing party in an action brought to impose liability under any  
21 section of this article OR TO HAVE ANY ACT OR OMISSION STOPPED AND PREVENTED,  
22 EITHER BY MANDAMUS OR INJUNCTION, PURSUANT TO SECTION 40-360.25 ~~shall be~~ IS  
23 entitled to recover ~~a~~ reasonable ~~attorney's fee~~ ATTORNEY FEES. IN ADDITION,  
24 IF THE PREVAILING PARTY IS A ONE-CALL NOTIFICATION CENTER, THAT PARTY IS  
25 ENTITLED TO RECOVER REASONABLE ADMINISTRATIVE COSTS AND EXPENSES.

26 Sec. 11. Section 40-360.28, Arizona Revised Statutes, is amended to  
27 read:

28 40-360.28. Civil penalty; liability

29 A. Except as provided in section 40-360.22, subsection ~~J~~ M, a person  
30 who violates any provision of this article is subject to a civil penalty in  
31 an amount not to exceed five thousand dollars to be imposed by the court in  
32 favor of the state. Any penalties received by the state shall be deposited  
33 in the state general fund.

34 B. If a violation of this article results in damage to an underground  
35 facility, the violator is liable to ~~the owner of the facility~~ ALL AFFECTED  
36 UNDERGROUND FACILITIES OPERATORS AND EXCAVATORS for all RESULTING damages ~~to~~  
37 ~~the facilities and all costs and expenses~~ PROXIMATELY CAUSED BY THE  
38 VIOLATIONS, including ~~damages to third persons~~ ECONOMIC LOSS, ~~incurred by the~~  
39 ~~owner of the facility as a result of the damage.~~

40 ~~C. If the underground facilities operator violates this article by~~  
41 ~~failing to locate and mark or by incorrectly locating the underground~~  
42 ~~facility pursuant to this article, the underground facilities operator~~  
43 ~~becomes liable for resulting damages, costs and expenses to the injured~~  
44 ~~party.~~



1 C. IF A PERSON VIOLATES THIS ARTICLE BY FAILING TO PROVIDE TIMELY  
2 NOTICE AS REQUIRED BY THIS ARTICLE, BY FAILING TO RESPOND IN THE TIME AND  
3 MANNER PROVIDED BY THIS ARTICLE OR BY FAILING TO LOCATE AND MARK AN  
4 UNDERGROUND FACILITY IN THE MANNER PROVIDED BY THIS ARTICLE, THE PERSON IS  
5 LIABLE TO ALL AFFECTED UNDERGROUND FACILITIES OPERATORS AND EXCAVATORS FOR  
6 ALL DAMAGES PROXIMATELY CAUSED BY THE VIOLATION, INCLUDING ECONOMIC LOSS.

7 D. NOTWITHSTANDING ANY OTHER LAW, A VIOLATION OF SECTION 40-360.22,  
8 SUBSECTION D OR SUBSECTION L, PARAGRAPH 3 IS A SUPERSEDING EVENT THAT BREAKS  
9 THE CHAIN OF CAUSATION FOR ANY DAMAGES THAT COULD RESULT FROM AN UNDERGROUND  
10 FACILITIES OPERATOR'S FAILURE TO ACCURATELY LOCATE OR MARK AN UNDERGROUND  
11 FACILITY.

12 E. IF A LANDLORD OR AN EXCAVATOR COMPLIES WITH THE DUTIES SET FORTH IN  
13 SECTIONS 40-360.22, 40-360.30 AND 40-360.32 FOR ALL FACILITIES OPERATED BY A  
14 LANDLORD AS PROVIDED IN SECTION 40-360.22, SUBSECTION P, PARAGRAPH 1, THE  
15 PERSON IS NOT LIABLE FOR ANY DEATH OR INJURY TO PERSONS OR PROPERTY OR FOR  
16 ANY ECONOMIC LOSS TO ANY PERSON TO THE EXTENT THE CONDUCT IS REGULATED BY  
17 THIS ARTICLE. THIS SECTION DOES NOT EXCUSE ANY LANDLORD OR EXCAVATOR FROM  
18 LIABILITY FOR ANY DEATH OR INJURY TO PERSONS OR PROPERTY OR FOR ANY ECONOMIC  
19 LOSS TO ANY PERSON TO THE EXTENT THE INJURY OR LOSS DOES NOT ARISE FROM THE  
20 CONDUCT REGULATED BY THIS ARTICLE.

21 ~~D.~~ F. This section is not applicable to an excavation made:

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

25 2. In agricultural operations or for the purpose of finding or  
26 extracting natural resources.

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

29 Sec. 12. Section 40-360.30, Arizona Revised Statutes, is amended to  
30 read:

31 40-360.30. Installation records of underground facilities

32 A. Except as otherwise provided in this subsection, for all new  
33 underground facilities, excluding service drops and service lines, installed  
34 after December 31, 1988 in a public street, alley or right-of-way dedicated  
35 to the public use **OR PUBLIC UTILITY EASEMENT**, but not including any express  
36 or implied private property utility easement, the underground facilities  
37 operator shall prepare, ~~or cause to be prepared,~~ **AND MAINTAIN** installation  
38 records of the underground facility, ~~shall keep such records in its~~  
39 ~~possession~~ and shall refer to such records in ~~locating and~~ marking pursuant  
40 to section 40-360.22, subsection B.

41 B. For all new sewer facilities installed after December 31, 2005 in  
42 any public street, alley, right-of-way dedicated to the public use or **PUBLIC**  
43 utility easement, the underground facilities operator of a sewer system shall  
44 prepare, ~~or cause to be prepared,~~ **AND MAINTAIN** installation records of the  
45 underground facility, ~~shall keep such records in its possession~~ and shall



1 refer to such records in ~~locating and~~ marking pursuant to section 40-360.22,  
2 subsection B. To assist the underground facilities operator of a sewer  
3 system in PREPARING AND maintaining such records, a certified survey plan of  
4 the sewer's location in the public street, alley, right-of-way dedicated to  
5 public use or PUBLIC utility easement shall be provided to the underground  
6 facilities operator of a sewer system by the customer receiving sewer service  
7 as a condition to receiving such sewer service.

8 C. FOR ALL NEW UNDERGROUND FACILITIES THAT ARE INSTALLED AFTER  
9 DECEMBER 31, 2006 IN AN APARTMENT COMMUNITY OR MOBILE HOME PARK AND THAT ARE  
10 NOT OWNED OR OPERATED BY A PUBLIC UTILITY OR MUNICIPAL CORPORATION, THE  
11 LANDLORD AT THE TIME THE FACILITIES ARE INSTALLED OR ABANDONED SHALL PREPARE  
12 AND MAINTAIN INSTALLATION RECORDS OF THE UNDERGROUND FACILITIES. SUCCESSOR  
13 LANDLORDS SHALL MAINTAIN THE INSTALLATION RECORDS THAT COME INTO THEIR  
14 POSSESSION. THE LANDLORD SHALL KEEP RECORDS IN ITS POSSESSION AND SHALL  
15 REFER TO RECORDS IN MARKING PURSUANT TO SECTION 40-360.22, SUBSECTION B.

16 D. Installation records REQUIRED BY THIS SECTION shall ~~also~~ reflect,  
17 if applicable, any field notes or other indications by the installer of the  
18 facilities that the installation involved deviations or changes from  
19 installation standards, instructions or designs and the correction of any  
20 inaccuracies found as a result of locating or marking the underground  
21 facilities. Installation records of an underground facility shall indicate  
22 if all or a portion of the facility has been abandoned. Installation records  
23 required by this section are for the internal use of the underground  
24 facilities operator AND ITS SUCCESSOR in locating its underground facilities  
25 and are not intended to be relied on by others.

26 ~~B-~~ E. Information contained in installation records relating to the  
27 nature and location of underground facilities, but not the installation  
28 records themselves, shall be made available ON A CONFIDENTIAL BASIS within  
29 ten working days ~~and on a confidential basis to authorized persons who submit~~  
30 ~~a written request and~~ FROM A WRITTEN REQUEST TO PERSONS who are engaged in  
31 the design of construction projects involving excavation in a public street,  
32 alley, right-of-way dedicated to the public use, or PUBLIC utility easement,  
33 ~~excluding~~ IN any express or implied private property utility easement, OR IN  
34 AN APARTMENT COMMUNITY OR MOBILE HOME PARK. The underground facilities  
35 operator shall make the same information available to authorized persons who  
36 are complying with a requirement imposed by contract providing for  
37 construction projects involving excavation in a public street, alley or  
38 right-of-way dedicated to the public use OR PUBLIC UTILITY EASEMENT, ~~but~~  
39 ~~excluding~~ IN any express or implied private property utility easement, IN ANY  
40 APARTMENT COMMUNITY OR MOBILE HOME PARK or by operation of law, ~~to verify or~~  
41 ~~confirm the nature and location of underground facilities. The underground~~  
42 ~~facilities operator, on consultation with the authorized person, shall~~  
43 ~~determine the appropriate manner and form for providing the information. THE~~  
44 ONLY LAWFUL USE OF THE INFORMATION THAT IS OBTAINABLE PURSUANT TO THIS  
45 SUBSECTION IS TO MINIMIZE DELAYS OF CONSTRUCTION PROJECTS. The underground

1 facilities operator may indicate any portions of the information that are  
2 proprietary and require the authorized person to protect proprietary matters.  
3 The underground facilities operator, ~~in its sole discretion,~~ may satisfy the  
4 requirements of this subsection by allowing an authorized person to inspect  
5 or copy THE installation records ~~themselves~~ REQUIRED BY THIS SECTION, WITHOUT  
6 CHARGE, OR MAY PROVIDE THE INFORMATION IN ANOTHER MANNER FOR A REASONABLE  
7 FEE. THE UNDERGROUND FACILITIES OPERATOR IS NOT LIABLE TO ANY PERSON FOR  
8 DAMAGES ARISING FROM ANY PERSON'S INSPECTION OF OR RELIANCE ON THE  
9 INSTALLATION RECORDS THAT ARE MADE AVAILABLE FOR THE PURPOSE OF COMPLYING  
10 WITH THIS SUBSECTION.

11 Sec. 13. Section 40-360.32, Arizona Revised Statutes, is amended to  
12 read:

13 40-360.32. One-call notification center membership; termination

14 A. EVERY LANDLORD, WITHOUT CHARGE TO THE LANDLORD, SHALL FILE WITH A  
15 ONE-CALL NOTIFICATION CENTER THE PROPERTY NAME, PROPERTY ADDRESS, CONTACT  
16 NAME OR JOB TITLE, CONTACT FAX NUMBER, CONTACT POSTAL MAILING ADDRESS,  
17 CONTACT ELECTRONIC MAIL ADDRESS IF AVAILABLE, CONTACT TELEPHONE NUMBER AND  
18 HOURS OF CONTACT. THE LANDLORD SHALL UPDATE ANY INFORMATION REQUIRED BY THIS  
19 SUBSECTION WITHIN SEVEN WORKING DAYS AFTER A CHANGE IN THE INFORMATION  
20 OCCURS. THE CONTACT PERSON OR PERSONS SHALL BE READILY AVAILABLE DURING THE  
21 HOURS OF CONTACT ON FILE. THE HOURS OF CONTACT REQUIRED BY THIS SUBSECTION  
22 SHALL BE CONSISTENT WITH THE LANDLORD'S REGULAR BUSINESS HOURS, BUT SHALL  
23 TOTAL AT LEAST THIRTY HOURS PER WEEK. SUBJECT TO THE AVAILABILITY OF MONIES,  
24 A ONE-CALL NOTIFICATION CENTER MAY APPLY FOR GRANTS FROM A GRANT ACCOUNT  
25 ESTABLISHED FOR THE PURPOSE OF MAINTAINING AND IMPARTING THE INFORMATION  
26 SUPPLIED TO THE CENTER FROM LANDLORDS AS PRESCRIBED BY THIS SUBSECTION.

27 B. Every underground facilities operator who is obligated to locate  
28 and mark underground facilities pursuant to section 40-360.22, subsection B,  
29 EXCEPT A LANDLORD EXEMPTED BY THIS SECTION, shall be a member of a one-call  
30 notification center, either statewide or serving each county in which such  
31 entity or person has underground facilities. THIS SUBSECTION DOES NOT APPLY  
32 TO A LANDLORD IF THE ONLY UNDERGROUND FACILITIES THAT THE LANDLORD ARE  
33 OBLIGATED TO LOCATE AND MARK ARE WITHIN AN APARTMENT COMMUNITY OR MOBILE HOME  
34 PARK.

35 C. Each one-call notification center shall establish a limited basis  
36 participation membership option, which may be made available to all members,  
37 but which must be made available for any member serving less than one  
38 thousand customers, or any member irrigation or electrical district. An  
39 underground facilities operator who elects limited basis participation  
40 membership shall provide to the one-call notification center the location of  
41 its underground facilities solely by identifying the incorporated cities and  
42 towns, or for unincorporated county areas, by identifying the townships, in  
43 which it has facilities. The service level provided to limited basis  
44 participation members by the one-call notification center is limited to  
45 providing excavators with the names and telephone numbers the excavators

1 should contact to obtain facilities location. Each one-call notification  
2 center shall establish fair and reasonable fees for limited basis  
3 participation members, based on customer count, areas occupied or miles of  
4 underground facilities.

5 D. When any person neglects or refuses to pay fees when due and is in  
6 arrears for ~~sixty days~~ TWO MONTHS, the one-call notification center may  
7 terminate the membership of that person without notice and may have a claim  
8 for fees and a separate claim for damages for breach of an ancillary  
9 agreement. The one-call notification center may refuse to reinstate any  
10 person's membership until that person's fee is paid in full.

11 E. EVERY UNDERGROUND FACILITIES OPERATOR, EXCEPT A LANDLORD EXEMPTED  
12 BY THIS SUBSECTION, SHALL FILE WITH THE CORPORATION COMMISSION THE JOB TITLE,  
13 ADDRESS AND TELEPHONE NUMBER OF THE PERSON OR PERSONS FROM WHOM THE NECESSARY  
14 INFORMATION MAY BE OBTAINED. SUCH PERSON OR PERSONS SHALL BE READILY  
15 AVAILABLE DURING ESTABLISHED BUSINESS HOURS. THE INFORMATION ON FILE SHALL  
16 ALSO INCLUDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF EACH ONE-CALL  
17 NOTIFICATION CENTER TO WHICH THE UNDERGROUND FACILITIES OPERATOR BELONGS.  
18 THIS SUBSECTION DOES NOT APPLY TO A LANDLORD IF THE ONLY UNDERGROUND  
19 FACILITIES THAT THE LANDLORD ARE OBLIGATED TO LOCATE AND MARK ARE WITHIN AN  
20 APARTMENT COMMUNITY OR MOBILE HOME PARK.

21 F. ALL UNDERGROUND FACILITIES OPERATORS, EXCEPT LANDLORDS, IN A COUNTY  
22 HAVING A POPULATION OF MORE THAN SEVEN HUNDRED ONE THOUSAND PERSONS SHALL  
23 HAVE DESIGNATED REPRESENTATIVES AVAILABLE AND ON CALL FOR EXCAVATORS WHO BY  
24 PUBLIC WORKS CONTRACT SPECIFICATIONS OR MUNICIPAL ORDINANCES ARE REQUIRED TO  
25 WORK IN CONGESTED LOCATIONS INVOLVING PUBLIC STREETS, ALLEYS OR RIGHTS-OF-WAY  
26 DEDICATED TO THE PUBLIC USE DURING THE NIGHT OR ON WEEKENDS. NIGHT AND  
27 WEEKEND TELEPHONE NUMBERS TO REACH THE DESIGNATED REPRESENTATIVES SHALL BE  
28 FURNISHED TO THE EXCAVATOR IN WRITING WITHIN FORTY-EIGHT HOURS AFTER THEY ARE  
29 REQUESTED FOR A SPECIFIC LOCATION.

30 G. THE FORM PREPARED BY A ONE-CALL NOTIFICATION CENTER AS PROVIDED IN  
31 SECTION 40-360.22, SUBSECTION A MAY PROVIDE A DISCLAIMER OF LIABILITY, MAY  
32 INSTRUCT THE LANDLORD TO OBTAIN AND REVIEW THIS ARTICLE AND MAY INSTRUCT THE  
33 LANDLORD TO OBTAIN THE ADVICE OF AN ATTORNEY TO ANSWER ANY QUESTIONS ABOUT  
34 ANY PART OF THE FORM OR THIS ARTICLE. THE FORM MAY INCLUDE GENERAL  
35 GUIDELINES THAT DESCRIBE THE OBLIGATIONS AND RIGHTS OF LANDLORDS AS  
36 ESTABLISHED BY THIS ARTICLE. THIS INFORMATION MAY INCLUDE THE FOLLOWING  
37 RIGHTS AND OBLIGATIONS:

- 38 1. TO FILE AND MAINTAIN CURRENT INFORMATION WITH A ONE-CALL  
39 NOTIFICATION CENTER.
- 40 2. TO LOCATE AND MARK CERTAIN UNDERGROUND FACILITIES IN RESPONSE TO AN  
41 EXCAVATOR'S REQUEST.
- 42 3. THE MANNER OF MARKING.
- 43 4. THE TIMING OF MARKING.
- 44 5. THE NOTIFICATION TO AN EXCAVATOR IF THE LANDLORD BELIEVES THAT THE  
45 LANDLORD WILL NOT BE TIMELY IN MAKING THE MARKINGS.

1           6. TO PROVIDE AND RECEIVE INFORMATION FROM AN EXCAVATOR, INCLUDING  
2 CONTACT INFORMATION AND THE ESTIMATED CONSTRUCTION SCHEDULE.

3           7. TO REQUIRE THE EXCAVATOR TO MARK THE PERIMETER OF THE EXCAVATION.

4           8. TO HOLD A PRECONSTRUCTION CONFERENCE WITH AN EXCAVATOR.

5           9. TO ENTER AN AGREEMENT WITH AN EXCAVATOR TO MODIFY THE EXCAVATION  
6 SCHEDULE, MARKING SCHEDULE OR MEANS OF EXCAVATION.

7           10. TO REQUEST AN EXCAVATOR TO MARK THE EXCAVATION AREA.

8           Sec. 14. Legislative intent

9           It is the intent of the legislature that a landlord shall be liable for  
10 all damages, including expenses and economic loss, incurred by an excavator  
11 as a result of the excavator's performance of all the requirements prescribed  
12 in section 40-360.22, subsection F, Arizona Revised Statutes, as amended by  
13 this act, that are proximately caused by the landlord's failure to mark an  
14 underground facility as required by this act, where the excavator locates the  
15 underground facility pursuant to section 40-360.22, subsection F, paragraph  
16 3, Arizona Revised Statutes, as amended by this act, and the excavator  
17 thereafter encounters the underground facility with hand tools.

18           Sec. 15. Effective date

19           This act is effective from and after December 31, 2006.