

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

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Chapters 1 - 590

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PUBLIC LAWS

OF THE

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AS PASSED AT THE

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1991

CHAPTER 435

H.P. 872 - L.D. 1258

**An Act to Provide for Equal Opportunity within the
Maine Turnpike Authority****Be it enacted by the People of the State of Maine
as follows:****Sec. 1. 23 MRSA §1966, sub-§2**, as enacted by PL 1981, c. 595, §3, is amended to read:

2. Contracts for construction or reconstruction. All contracts and agreements relating to the construction or reconstruction of the turnpike and the construction or reconstruction of connecting tunnels and bridges, overpasses, underpasses, interchanges and toll facilities must be approved by the Department of Transportation and the turnpike and connecting tunnels and bridges, overpasses, underpasses, interchanges and barriers ~~shall~~ **must** be constructed or reconstructed under the supervision of the department.

Contractors and subcontractors on all authority construction and reconstruction projects must be equal opportunity employers and, in connection with contracts in excess of \$250,000, also pursue in good faith affirmative action programs designed to remedy underrepresentation of minorities, women and persons with disabilities. The authority may by rule provide for the enforcement of this requirement. To the extent practical, the authority may use program and technical information developed by and available through the Department of Transportation to carry out this subsection.

Sec. 2. 23 MRSA §1966, sub-§5 is enacted to read:

5. Fair practices; affirmative action. The authority is subject to and shall comply with Title 5, chapter 65.

See title page for effective date.

CHAPTER 436

S.P. 599 - L.D. 1584

**An Act Concerning Motor Vehicle Registrations
after Suspension of the Right to Operate a
Motor Vehicle****Be it enacted by the People of the State of Maine
as follows:****29 MRSA §2241-H, first ¶**, as amended by PL 1989, c. 872, §9, is further amended to read:

In the case of any conviction or adjudication under former section 1312, subsection 10; section 1312-B; 1312-C; 1314 or for any offense for which the suspension of a license or the right to operate a motor vehicle or the right to apply for or obtain a license is required by law ~~the court shall also suspend the defendant's right to register a motor vehicle and the registration certificate and plates issued by this State to the defendant for that motor vehicle, or in any case in which the court suspends a license under section 2305, the court may also suspend the defendant's right to register a motor vehicle and the registration certificate and plates issued by this State to the defendant for that motor vehicle,~~ and the court shall inform the defendant of the ~~suspensions~~ **suspension** and the defendant shall acknowledge this notice in writing on a form to be provided by the court. The court shall suspend the right to register a motor vehicle and all registration certificates and plates issued by the Secretary of State to any person convicted for a violation of section 1312-B who has a previous conviction for a violation of former section 1312, subsection 10; former section 1312-B; or section 1312-B within the 6-year period defined by section 1312-B, subsection 2, paragraph F. The court, as part of its sentence, unless the defendant appeals and a stay of execution of the suspension is granted, shall take any license certificate issued by this State from the person convicted or adjudicated or any license certificate issued by another state, foreign country or province from the person convicted or adjudicated if that person is residing, domiciled or employed in this State. The court, as part of its sentence, unless the defendant appeals and a stay of execution of the suspension is granted, may take from the person convicted or adjudicated any license certificate issued by another state or foreign country or province if the person is not residing, domiciled or employed in this State. At sentencing, the court, upon reasonable cause shown, may stay the suspensions for a period not to exceed 4 hours from the time of sentencing. The court may issue such evidence of that stay as it determines necessary. The court shall forward the license certificate, a copy of the sentence and the acknowledgment of notice by mail to the Secretary of State, and the court shall order the defendant to return the suspended registration certificate and plates to the Secretary of State. The Secretary of State shall return the certificate of registration and plates to the defendant when the defendant's license and operating and registration privileges have been restored.

See title page for effective date.

CHAPTER 437

S.P. 186 - L.D. 495

An Act to Create a Maine "Dig-safe" System**Be it enacted by the People of the State of Maine
as follows:**

Sec. 1. 23 MRSA §3360-A, sub-§1, ¶¶C-1, F and G are enacted to read:

C-1. "Excavator" means any person proposing to make, making or contracting for an excavation.

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers.

G. "Utility" means any public utility as defined in Title 35-A, section 102, subsection 13.

Sec. 2. 23 MRSA §3360-A, sub-§1-A is enacted to read:

1-A. Damage prevention system. Each underground facility operator must be a member of and participate in an underground facility damage prevention system, referred to in this section as the "system." The system shall operate during regular business hours throughout the year. The system shall receive notices of proposed excavations and immediately transmit those notices to underground facility operators whose facilities may be affected. The cost for operation of the system must be apportioned equitably among members. Nothing in this subsection prohibits a municipality, utility or other entity that owns or operates an underground facility from voluntarily becoming a member of the system. Notwithstanding subsection 1, paragraph F, a person that voluntarily becomes a member of the system is deemed an underground facility operator for the purposes of this section.

Sec. 3. 23 MRSA §3360-A, sub-§3, as enacted by PL 1979, c. 362, §2, is repealed and the following enacted in its place:

3. Notice by excavator. A person may not begin excavation without first giving notice as required by this section, unless exempted pursuant to this section.

A. In addition to any other notices required under this section, each excavator shall notify the system of the location of the intended excavation at least 3 business days but not more than 30 calendar days prior to the commencement of excavation.

B. Notice may be in writing, by telephone or by electronic facsimile as long as an excavator acquires and records an acknowledgement of the receipt of any notice the excavator sends by electronic facsimile. For purposes of this section, the system shall provide a toll-free telephone number.

C. Prior to notifying the system, the area of proposed excavation must be marked by the excavator in a manner designed to enable the operator of the underground facility to know the approximate boundaries of the proposed excavation.

D. If an excavation involves blasting, the excavator shall provide written notice of that blasting, either in the initial notice or in a subsequent notice, accurately specifying the date and location of that blasting. This written notice must be given and received at least 24 hours in advance except that, in the case of an unanticipated obstruction requiring blasting, the excavator shall provide written notice not less than 4 hours in advance of that blasting.

E. If the proposed excavation or blasting does not commence within 30 calendar days of notification under this subsection or the excavation or blasting will be expanded outside of the location originally specified in the notification, the excavator responsible for that excavation shall again notify the system as specified in paragraph A.

Sec. 4. 23 MRSA §3360-A, sub-§§3-A, 3-B and 3-C are enacted to read:

3-A. Notification by system. Upon receiving notice of excavation, the system shall notify immediately all members whose underground facilities may be affected. The system shall maintain adequate records to document compliance with requirements of this chapter.

3-B. Additional notification by certain utilities. In addition to providing any other notices required under this section and before commencing any excavation for the purposes of working on an underground gas transmission line, a gas utility as defined in Title 35-A, section 102, subsection 8 or a natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide to the fire department within whose service area the excavation will occur notice of its intent to excavate. This notice must be in writing or by telephone and must be given at least 3 business days prior to the utility commencing work. The utility may not commence work until it has received from the fire department an acknowledgment of the notice either by telephone or in writing.

3-C. Information provided to municipalities, fire departments and emergency response agencies. Each gas utility as defined in Title 35-A, section 102, subsection 8 or natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide maps to:

A. Each municipality within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the municipality;

B. Each fire department within whose service territory it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the fire department;

C. Each county emergency management agency within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the county emergency management agency; and

D. The Maine Emergency Management Agency. These maps must clearly indicate the location and depth of all main supply underground transmission facilities that the utility operates in this State.

The utility must provide updated maps to the appropriate entities whenever changes occur in the configuration of the utility's main supply underground facilities.

Sec. 5. 23 MRSA §3360-A, sub-§4, as enacted by PL 1979, c. 362, §2, is amended to read:

4. Response to notice. ~~A person~~ An underground facility operator shall, upon receipt of the notice provided for in subsection 3 ~~3-A~~, advise the excavator of the location and size of the operator's underground facilities in the proposed excavation area by marking the location of the facilities with stakes, paint or by other identifiable marking within 36 inches horizontally from the exterior sides markings. The marking must identify a strip of land not more than 3 feet wide directly over the facility or a strip of land extending not more than 1 1/2 feet on either side of the underground facilities facility and must indicate the depth of the underground facility, if known. The person providing information underground facility operator shall respond complete this marking no later than 2 full business days after receipt of the notice. It shall be the responsibility of the excavator to maintain these location markings until the excavations are completed. After the underground facility operator has marked the location of that operator's underground facilities in the proposed excavation area, the excavator is responsible for maintaining the markings at the location, unless the excavator requests remarking at the location due to obliteration, destruction or other removal of the markings. The underground facility operator shall remark the location within one business day following the receipt of a request to remark.

If the proposed excavation is of such length or size that the underground facility operator advises the excavator that the operator can not reasonably respond with respect to all the operator's underground facilities within 2 full business days, the excavator shall notify the operator of the specific loca-

tion in which excavation will first be made and the operator shall respond with respect to the operator's underground facilities in that location within 2 full business days and for the remaining facilities within a reasonable time thereafter.

The system may adopt rules requiring, under certain circumstances, face-to-face meetings between excavators and underground facility operators.

Sec. 6. 23 MRSA §3360-A, sub-§5-A is enacted to read:

5-A. Notice of damage. When an underground facility is damaged, the excavator causing the damage shall immediately notify the affected underground facility operator. The excavator may not backfill an excavation where damage has occurred without first receiving permission from the affected operator.

Sec. 7. 23 MRSA §3360-A, sub-§6, as enacted by PL 1979, c. 362, §2, is repealed and the following enacted in its place:

6. Liability of excavator. If an excavator complies with subsection 3 and if information pursuant to subsections 3-A and 4 is not provided within the time specified or if the information provided fails to identify the location of the underground facilities in accordance with subsection 4, then an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence.

Sec. 8. 23 MRSA §3360-A, sub-§§6-A and 6-B are enacted to read:

6-A. Forfeitures. The forfeitures for failure to comply with this section are as follows.

A. An excavator who does not give notice of an excavation under subsection 3 and who damages an underground facility in the course of that excavation is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages.

B. An underground facility operator who does not mark the location of the operator's underground facilities under subsection 4 is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages resulting from the operator's failure to mark those facilities.

6-B. Failure to notify. An excavation that is made without the excavator providing any or all of the notices required by this section that results in any damage to an underground facility or facilities is prima facie evidence in any civil proceeding that the damage was caused by the negligence of the excavator.

Sec. 9. 23 MRSA §3360-A, sub-§9, as amended by PL 1989, c. 109, is repealed.

Sec. 10. 23 MRSA §3360-A, sub-§10 is enacted to read:

10. Further notice requirements. The following provisions govern excavations in areas where there are underground facilities owned or operated by a person who is not an underground facility operator as defined in subsection 1 and who is not a voluntary member of the system established under subsection 1-A.

A. In addition to other notice requirements under this section and except for an employee with respect to an employer's facility, an excavator shall notify any person who is not a member of the system and has underground facilities in the area of the proposed excavation. This notice must be in writing or in person and must be given at least 3 business days prior to the commencement of excavation.

B. A person owning or operating an underground facility shall, upon receipt of the notice provided for in paragraph A, advise the excavator of the location and size of the underground facilities in the proposed excavation area by marking the location of the facilities with stakes, paint or by any other identifiable markings within 36 inches horizontally from the exterior sides of the underground facilities and the depth of the underground facilities, if known. The person providing information shall respond no later than 2 full business days after receipt of the notice. It is the responsibility of the excavator to maintain those location markings until the excavations are completed.

If an excavator complies with paragraph A and if information pursuant to paragraph B is not provided within the time specified or if the information fails to identify the location of the underground facilities in accordance with paragraph B, then an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence.

Sec. 11. System choice under the Maine Revised Statutes, Title 23, section 3360-A, subsection 1-A. Each underground facility operator, as defined in the Maine Revised Statutes, Title 23, section 3360-A, subsection 1, shall participate in a damage prevention system comparison study, the sole purpose of which is to compare the costs of establishing a stand-alone underground damage prevention system in Maine to the costs of joining the Massachusetts Utility Underground Plant Damage Prevention System. The study participants shall determine which option involves the least overall costs and present their report to the Public Utilities Commission and the Joint Standing Committee on Utilities no later than January 1, 1992. The commission shall make an evaluation of the reasonableness of the report's conclusion by March 1, 1992. By January 1, 1993, underground facility operators shall establish a Maine-

based system unless the study's conclusion, approved by the commission, indicates that joining the Massachusetts Utility Underground Plant Damage Prevention System will be less expensive.

The duties imposed by this section of this Act are in addition to those imposed under Title 23, section 3360-A. Nothing in this section of this Act may be interpreted to limit, alter or otherwise affect any duties and liabilities established under Title 23, section 3360-A.

Sec. 12. Effective date. Sections 1 to 10 of this Act take effect on January 1, 1993.

See title page for effective date, unless otherwise indicated.

CHAPTER 438

H.P. 912 - L.D. 1309

An Act to Provide for Changes to the Membership of the Electricians' Examining Board

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §1151, as amended by PL 1989, c. 503, Pt. B, §125, is further amended to read:

§1151. Appointment; vacancies; removal; compensation

The Electricians' Examining Board, as established by Title 5, section 12004-A, subsection 13, and in this chapter called the "board," ~~shall consist~~ consists of ~~6~~ 7 members appointed by the Governor, called the "appointive members," and the Commissioner of Professional and Financial Regulation or a representative appointed by the commissioner.

The ~~6~~ 7 appointive members shall consist of: ~~One~~ one master electrician; one electrician who is a bona fide member from organized labor classified as an inside electrician; one electrical inspector; one master electrician from the education field; and one person experienced in the electrical field, all of whom shall have at least 10 years of experience in the electrical field; provided that the latter 3 need not be active electricians at the time of their appointment; and ~~one representative~~ 2 representatives of the public. At the time of each appointment, the State Electrical Associates may nominate 3 persons for that appointment. To the extent the State Electrical Associates so nominates persons otherwise qualified for appointment to the board, the appointive members, other than the ~~representative~~ representatives of the public, may be selected from the persons so nominated.

Appointments ~~shall be~~ are made for a 3-year term, except that at least one appointive member's term shall