

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 5, 2000 to May 12, 2000**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 11, 2000**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2000**

administrators and due certificate filed with the Secretary of State.

See title page for effective date.

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## CHAPTER 718

H.P. 1721 - L.D. 2427

### An Act Relating to Underground Facility Plants

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

**Sec. 1. 23 MRSA §3360-A, sub-§1, ¶¶A-1 and A-2** are enacted to read:

A-1. "Borrow pit" has the same meaning as provided in Title 38, section 482, subsection 1-A.

A-2. "Commercial timber harvesting activity" means the cutting or removal of timber for the primary purpose of selling or processing forest products and includes the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery and the creation, use and maintenance of skid trails, skid roads, winter haul roads and other roads to facilitate timber harvesting.

**Sec. 2. 23 MRSA §3360-A, sub-§1-A**, as enacted by PL 1991, c. 437, §2 and affected by §12, is amended to read:

**1-A. Damage prevention system.** Each underground facility operator ~~must~~ shall 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 and maintain adequate operations at all other times to receive and process emergency notifications of proposed excavations. 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-§4**, as amended by PL 1991, c. 437, §5 and affected by §12, is further amended to read:

**4. Response to notice.** An underground facility operator shall, upon receipt of the notice provided for in subsection 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 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~~ each side of the underground facility and must indicate the depth of the underground facility, if known. The underground facility operator shall complete this marking no later than 2 full business days after receipt of the notice. 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 location 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. 4. 23 MRSA §3360-A, sub-§§4-A and 4-B**, as enacted by PL 1997, c. 631, §2, are repealed.

**Sec. 5. 23 MRSA §3360-A, sub-§4-C** is enacted to read:

**4-C. Excavation methods.** An excavator may not use mechanical means of excavation when excavating within 18 inches of any marked underground facilities until the underground facilities have been exposed, except that mechanical means may be used, as necessary, for initial penetration and removal of pavement, rock or other materials requiring use of mechanical means of excavation. Once the underground facilities have been exposed, further excavation must be performed employing reasonable precautions to avoid damage to the underground facilities, including, but not limited to, any substantial weakening of structural or lateral support of the facilities or penetration or destruction of the facilities

or their protective coatings. For the purposes of this subsection, "mechanical means of excavation" means excavation using any device or tool powered by an engine except air vacuum methods of excavation.

**Sec. 6. 23 MRSA §3360-A, sub-§5**, as enacted by PL 1979, c. 362, §2, is repealed and the following enacted in its place:

**5. Emergency excavations.** In an emergency, an excavator may commence an excavation after having taken all reasonable steps, consistent with the emergency, to notify the system and to mark the excavation site consistent with subsection 3, paragraph C. Each underground facility operator shall locate its underground facilities as soon as practicable after receiving notification of an emergency excavation whether or not the excavation has begun.

**Sec. 7. 23 MRSA §3360-A, sub-§§5-B and 5-C** are enacted to read:

**5-B. Exemption; commercial forestry and borrow pit operations.** A person is exempt from the notice requirements of subsection 3 for any excavation undertaken in conjunction with a commercial timber harvesting activity or borrow pit as long as the excavation:

A. Is not conducted in a public place, on public land or within a public easement, including, but not limited to, a public way;

B. Is not conducted within 100 feet of an easement or land owned by an underground facility operator;

C. Is not conducted within 100 feet of an underground facility; and

D. Does not involve the use of explosives.

**5-C. Exemptions; written agreements.** A person undertaking an excavation in conjunction with a commercial timber harvesting activity within 100 feet of an underground facility or on an easement or land owned by an underground facility operator or within 100 feet of an easement or land owned by an underground facility operator is exempt from the notice requirements of subsection 3 and from the provisions of subsection 4-C if the person:

A. Has contacted the system to determine the identity of all underground facility operators that own or operate underground facilities within the area of the excavation;

B. Has entered into written agreements with all underground facility operators owning or operating facilities in the area of the excavation and

with all persons owning the land on which the excavation occurs; and

C. Undertakes the excavation in accordance with the terms of the written agreements.

**Sec. 8. 23 MRSA §3360-A, sub-§6**, as amended by PL 1997, c. 631, §3, is further amended to read:

**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, ~~or if an excavator is excavating in an area for which written clearance has been issued pursuant to subsection 4 A,~~ 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. 9. 23 MRSA §3360-A, sub-§6-A**, as amended by PL 1997, c. 631, §4, is repealed.

**Sec. 10. 23 MRSA §3360-A, sub-§6-B**, as enacted by PL 1991, c. 437, §8 and affected by §12, is amended to read:

**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 or administrative proceeding that the damage was caused by the negligence of the excavator.

**Sec. 11. 23 MRSA §3360-A, sub-§6-C** is enacted to read:

**6-C. Forfeitures.** In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty for any violation of this subsection. The administrative penalty may not exceed \$500, except that if the person has been found in violation of this subsection within the prior 12 months the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Prior to imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the

violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any of the following violations:

A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section;

B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility;

C. Excavation by an excavator that does not comply with the requirements of section 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C;

D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by section 4; or

E. Marking by an underground facility operator of the location of an underground facility in a reckless or negligent manner.

**Sec. 12. 23 MRSA §3360-A, sub-§11,** as enacted by PL 1997, c. 229, §2, is repealed and the following enacted in its place:

**11. Enforcement.** The Public Utilities Commission may adopt procedures necessary and appropriate to gather information and hear and resolve complaints concerning failure to comply with the provisions of this section.

**Sec. 13. 23 MRSA §3360-A, sub-§12,** as enacted by PL 1997, c. 229, §2, is amended to read:

**12. Injunctions; costs.** The owner or operator of an underground facility or the Public Utilities Commission may commence an action in a court of competent jurisdiction seeking a temporary restraining order or injunction to prevent a person from undertaking an excavation that may result in damage to the underground facility. The court may issue a temporary restraining order or injunction if the court determines that the excavation or proposed excavation:

A. Is being conducted or is likely to be conducted in a negligent or unsafe manner; and

B. Is causing or is likely to cause damage to the underground facility.

If the owner or operator prevails in an action brought pursuant to this subsection, the owner or operator is entitled to an award of the costs of bringing the action, including reasonable attorney's fees.

**Sec. 14. 35-A MRSA §102, sub-§8,** as amended by PL 1999, c. 143, §2, is further amended to read:

**8. Gas utility.** "Gas utility" includes every person, that person's lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any gas plant for compensation within this State, except when gas is made or produced on and distributed by the maker or producer through private property alone solely for its own tenants and not for sale to others, or when the gas is sold solely for use in vehicles fueled by natural gas or ~~when the gas is sold in liquid form in individual containers or is delivered in bulk in liquid form to a central tank to a liquid gas system that serves fewer than 10 customers and as long as no portion of which the liquid gas system is located in a public place or that serves a single customer if the liquid gas system is located entirely on the customer's premises.~~ "Gas utility" does not include a gas marketer whose business in the State is restricted to selling natural gas to retail consumers and who does not provide natural gas transmission or distribution service.

**Sec. 15. 35-A MRSA §4702,** as enacted by PL 1987, c. 141, Pt. A, §6, is repealed and the following enacted in its place:

**§4702. Safety jurisdiction only over certain gas utilities**

A gas utility owning, controlling, operating or managing a central tank system or a petroleum gas system is subject to the jurisdiction of the commission solely with respect to safety if that system serves:

**1. Ten or more customers.** Ten or more customers;

**2. System in public place.** More than one customer and any portion of the central tank system or petroleum gas system is located in a public place; or

**3. One customer.** One customer and a portion of the central tank system or petroleum gas system is located off the customer's premises in a public place.

See title page for effective date.