

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

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NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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

J.S. McCarthy Company
Augusta, Maine
2001

Sec. 2. 38 MRSA §480-Q, sub-§22 is enacted to read:

22. Archaeological excavation. Archaeological excavation adjacent to a great pond, freshwater wetland, coastal wetland, sand dune system, river, stream or brook as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

Sec. 3. Maine Land Use Regulation Commission; rules. The Maine Land Use Regulation Commission shall adopt rules exempting archaeological excavations that are within its jurisdiction and adjacent to a great pond, freshwater wetland, coastal wetland, sand dune system, river, stream or brook from its permitting requirements as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures. Rules adopted under this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 208

S.P. 303 - L.D. 1050

An Act to Allow Victims of Crimes More Access to Inmate Records

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

Sec. 1. 34-A MRSA §3003, sub-§1-B is enacted to read:

1-B. Release of certain information to victims. Notwithstanding subsection 1, upon the request of a person who was the victim of a crime, as verified by the department or the prosecuting attorney, for which a client was incarcerated, the department shall disclose the following information to the victim:

A. Whether the client has been charged with committing any crime while incarcerated and, if so, the crime with which the client has been charged; and

B. Whether the client has been disciplined while incarcerated and, if so, the offense for which the

disciplinary action was taken and the type of disciplinary action taken.

See title page for effective date.

CHAPTER 209

S.P. 301 - L.D. 1012

An Act to Safeguard Production of Groundwater

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period in order to govern the spring construction season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 5 MRSA §12004-G, sub-§13-B, as enacted by PL 1991, c. 455, Pt. A, §1, is amended to read:

13-B.	Maine	\$50 Per	32
Environment/ Health Engineering	Water Well Drilling Commission	Meeting Plus Expenses	MRSA §4700-G

Sec. A-2. 22 MRSA c. 270-C is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 270-C

MAINE WATER WELL PROGRAM

Sec. A-3. 22 MRSA §§1689 and 1689-A, as enacted by PL 1991, c. 455, Pt. A, §2, are amended to read:

§1689. Program established

The Maine Water Well ~~Drilling~~ Program, known in this chapter as "the program," is established to provide the public with the highest quality drinking water possible by ensuring that water wells are drilled, constructed, altered or abandoned in a manner that

protects ~~ground-water~~ groundwater from contamination.

§1689-A. Administrative authority

The Maine Water Well ~~Drilling~~ Commission, as established in Title 5, section 12004-G, subsection 13-B, shall administer the program. The commission has the powers and duties set forth in Title 32, chapter 69-C.

Sec. A-4. 32 MRSA §3501, sub-§6, as enacted by PL 1993, c. 25, §1, is amended to read:

6. Installation, repair or replacement of well pumps. A person licensed under this subchapter who performs the ~~initial installation, repair or replacement~~ of a pump in a well, as defined in section 4700-E, subsection 8, shall install, repair or replace that pump in compliance with the code of performance adopted by the Maine Water Well ~~Drilling~~ Commission pursuant to section 4700-H, subsection 5. Any person ~~licensed under this subchapter who performs the initial installation of a water well pump in violation of that code of performance~~, company, firm, partnership or corporation who installs, alters, repairs or replaces a pump system without being licensed as provided in this chapter or in violation of the code of performance, except for an apprentice pump installer as set forth in this chapter, or any person, firm, partnership or corporation who procures a license as provided in this chapter wrongfully or by fraud commits a civil violation punishable by a fine of not more than \$1,000.

This subsection does not prevent a person from making pump system installations, alterations, repairs or replacements in a single-family residence occupied by that person or to be occupied by that person as a bona fide personal abode, providing the installation, alteration, repair or replacement conforms to the standards set forth in this chapter and any rules adopted by the Maine Water Well Commission or the department.

This subsection does not prevent a person from removing and replacing an existing pump for the purpose of well inspection or to test pumping if the pump and electrical system are not being modified.

PART B

Sec. B-1. 32 MRSA c. 69-C is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 69-C

MAINE WATER WELL COMMISSION

Sec. B-2. 32 MRSA §4700-E, as amended by PL 1993, c. 25, §§2 to 5, is further amended to read:

§4700-E. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Apprentice well driller. "Apprentice well driller" means a person who is engaged to work at and learn the trade of well drilling under the direct supervision of a master or journeyman well driller.

1-A. Apprentice pump installer. "Apprentice pump installer" means a person who is engaged to work at and learn the trade of water well pump installation under the direct supervision of a master or journeyman pump installer. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as an apprentice pump installer.

2. Commission. "Commission" means the Maine Water Well ~~Drilling~~ Commission created under section 4700-G.

3. Department. "Department" means the Department of Human Services.

~~**3-A. Geotechnical driller.** "Geotechnical driller" means a person doing the work of drilling, driving or boring ground-water monitoring wells.~~

3-B. Journeyman pump installer. "Journeyman pump installer" means a person doing the work of pump installation, repair or replacement in water wells who is in the employment of a master pump installer. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as a journeyman pump installer.

4. Journeyman well driller. "Journeyman well driller" means a person doing the work of drilling, driving or boring wells who is in the employment of a master well driller.

4-A. Master pump installer. "Master pump installer" means a person, firm or corporation engaged in the installation, replacement or repair of a pump in a water well. The licensure of a master pump installer under this chapter must specify the name of the person licensed. In the case of a firm, the person licensed as a master pump installer must be a member or employee of the firm. In the case of a corporation, the person licensed as a master pump installer must be an employee of the corporation or an officer of the corporation. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as a master pump installer.

5. Master well driller. "Master well driller" means a person, firm or corporation engaged in the business of drilling, driving or boring wells. The

~~registration licensure~~ of a master well driller under this chapter must specify the name of the person ~~registered licensed~~. In the case of a firm, the person ~~registered licensed~~ as a master well driller must be a member or employee of the firm. In the case of a corporation, the person ~~registered licensed~~ as a master well driller must be an employee of the corporation or an officer of the corporation.

6. Pump or pump system. "Pump" or "pump system" means mechanical equipment or a device used to remove water from a well including all piping and wiring up to the existing equipment in the structure.

6-A. Pump installation company. "Pump installation company" means a person, firm, partnership or corporation that is engaged in the trade of water well pump installation, repair or replacement.

7. Pump installer. "Pump installer" means a ~~person, firm or corporation that performs the initial installation of a pump in a well. The registration of a pump installer under this chapter must specify the name of the person registered. In the case of a firm, the person registered as a pump installer must be a member or employee of the firm. In the case of a corporation, the person registered as a pump installer must be an employee of the corporation or an officer of the corporation. The term "pump installer" does not include a person, firm or corporation that removes, replaces or repairs a pump in an existing well. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as a pump installer an apprentice pump installer, journeyman pump installer or master pump installer.~~

8. Well or water well. "Well" or "water well" means any hole drilled, driven or bored into the earth used to extract drinking water. The terms "well" and "water well" do not include:

- A. Dug wells;
- B. Monitoring wells;
- C. Wells constructed exclusively for the relief of artesian pressure at hydroelectric projects;
- D. Wells constructed for temporary dewatering purposes;
- E. Wells constructed for the purposes of extracting oil, gas or brine; and
- F. Wells on private property for private use that are constructed by the property owner or lessee of the property.

9. Well driller. "Well driller" means an apprentice well driller, journeyman well driller or master well driller.

11. Well drilling company. "Well drilling company" means a person, firm, partnership or corporation that owns or otherwise operates any mechanical equipment used to drill, drive or bore water wells.

Sec. B-3. 32 MRSA §4700-G, sub-§1, as enacted by PL 1991, c. 455, Pt. B, §1, is amended to read:

1. Establishment of commission. The Maine Water Well ~~Drilling~~ Commission, as authorized by Title 5, chapter 379, is established to carry out the provisions of this chapter. The purpose of the commission is to provide the public with the highest quality drinking water possible by ensuring that water wells are drilled, constructed, altered or abandoned in a manner that protects ground-water groundwater from contamination.

Sec. B-4. 32 MRSA §4700-G, sub-§2, as amended by PL 1999, c. 556, §28, is further amended to read:

2. Membership. The commission consists of the Director of the Division of Health Engineering within the Department of Human Services or the director's designee; the Director of the Bureau of Geology and Natural Areas within the Department of Conservation or the director's designee; the Commissioner of Transportation or the commissioner's designee; and 4 public members, 3 of whom must be well drillers. ~~One well driller must be a geotechnical driller.~~

Sec. B-5. 32 MRSA §4700-G, sub-§§3 and 5, as enacted by PL 1991, c. 455, Pt. B, §1, are amended to read:

3. Appointing authority. The Governor shall appoint the public members. Members who are well drillers must be appointed from among nominees selected by the Governor or the Maine Ground Water Well Association.

5. Terms of office. The term of the public members is 5 years. Terms must be staggered so that no more than 2 public member terms expire in any one year. Members who are not public members serve a term coincident with their term of office. The Governor shall fill any vacant seat on the commission by a qualified person for the remainder of the unexpired term. A member of the commission may be removed from office for cause by the Governor.

Sec. B-6. 32 MRSA §4700-G, sub-§7, ¶A, as enacted by PL 1991, c. 455, Pt. B, §1, is amended to read:

- A. The names and addresses of all persons ~~registered licensed~~ under this chapter; and

Sec. B-7. 32 MRSA §4700-H, sub-§§2 and 3, as enacted by PL 1991, c. 455, Pt. B, §1, are amended to read:

2. License well drillers, well drilling companies, pump installers and pump installation companies. The commission shall ~~register~~ license well drillers ~~and, well drilling companies, pump installers and pump installation companies~~ and may initiate action for the revocation or suspension of such ~~registrations~~ licenses.

3. Investigate complaints. The commission shall investigate complaints and cases of noncompliance with, or violation of, this chapter or of the well driller and pump installer code of performance adopted by the commission. Complainants must petition the commission in writing within 24 months of completion of a well or the installation, repair or replacement of a pump system. At its discretion, the commission may request that an investigation of an alleged violation be conducted by a neutral qualified individual, acceptable to both the alleged violator and the commission, who shall report to the commission. At its discretion, the commission may refer a complaint to the Attorney General.

Sec. B-8. 32 MRSA §4700-H, sub-§4, as amended by PL 1993, c. 25, §9 and affected by §15, is further amended to read:

4. Revocation and suspension of license. If the commission determines a violation of this chapter, the well driller and pump installer code of performance or other laws and rules in effect, including the water well information laws, Title 12, section 550-B, has occurred, the commission shall notify the responsible water well driller ~~and, well drilling company, pump installer or pump installation company~~ by certified or registered mail of the violation ~~and order them to correct the violation~~. The commission may order the responsible party or parties to correct, within 48 hours of notification, any violation it determines to be a significant threat to public health, including but not limited to, potential contamination by pathogenic organisms. The commission may order that all other violations be corrected within a period of 60 days following receipt of notification. If the violation is not corrected within 60 days, or within 48 hours for significant threats to public health, the commission may revoke or suspend the registration license of the responsible party or parties. A registrant licensee who receives a written notice of a violation or of a revocation or suspension of registration a license under this subsection may request a hearing before the commission. The commission shall conduct such hearings and issue its decision within 30 days of the request. A decision of the commission under this subsection is a final agency action. The commission shall adopt rules governing criteria for license

reinstatement. Rules adopted by the commission pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. B-9. 32 MRSA §4700-H, sub-§§6 and 7 are enacted to read:

6. Levy fines. The commission may levy fines for violations of the well driller and pump installer code of performance of not more than \$1,000 per violation.

7. Order well abandonment. The commission shall adopt rules establishing procedures for determining that a well must be abandoned because of prior contamination or because it has been constructed in violation of existing regulations and standards, can not be altered or repaired to meet existing regulations or standards and poses a significant threat to public health or groundwater contamination. Rules adopted by the commission pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. B-10. 32 MRSA §4700-I, as amended by PL 1993, c. 25, §§10 and 11 and affected by §15, is further amended to read:

§4700-I. Licensure and fees

Effective January 1, 1994, a person may not participate in the physical construction of a well for compensation or any public drinking water well unless ~~registered~~ licensed under this section.

1. Fees. The commission shall establish ~~registration license~~ fees sufficient to recover reasonable costs of administering this chapter, including costs associated with the development and administration of examinations. ~~A registration fee is~~ License fees are not required for apprentice well driller registration or apprentice pump installer licenses.

2. Licensure. An applicant for ~~registration~~ licensure shall submit to the commission, on a form provided by the commission, a written application for ~~registration~~ licensure containing such information as the commission requires. A person who holds a valid license as provided for in this section must be in the charge of a licensed well drilling company or pump installation company in order to actively practice well drilling or pump installation, repair or replacement. A company license is valid only while the company employs at least one licensed master well driller for a well drilling company or one master pump installer for a pump installation company. The commission shall register license an applicant for well driller registration licensure as either a master well driller or a journeyman well driller and applicants for pump installer licensure as either a master pump installer or a

journeyman pump installer, based on the following criteria.

A. A master well driller must have a minimum of 3 years experience in well drilling and have worked an average of 1,000 hours per year as a journeyman well driller for each of those years.

B. A journeyman well driller must have at least one year experience in well drilling and have worked at least 1,000 hours during that year as an apprentice well driller.

C. A master pump installer must have a minimum of 3 years experience as a pump installer and have worked at least 350 hours as a pump installer during each of those years.

E. A journeyman pump installer must have at least one year experience in pump installing and have worked at least 350 hours during that year as an apprentice pump installer.

F. A well drilling company must be issued a license upon presentation to the commission of a valid master well driller license issued to and held by the owner or an employee of the firm, partnership or corporation.

G. A pump installation company must be issued a license upon presentation to the commission of a valid master pump installer license issued to and held by the owner or an employee of the firm, partnership or corporation.

The commission shall ~~register~~ license a well driller or pump installer applicant who is not eligible for ~~registration licensure~~ under paragraphs A to ~~E~~ E as an apprentice.

3. Term of license. Well drillers and pump installers ~~shall register~~ must be licensed annually. All ~~registrations~~ licenses expire on December 31st of each year. Any person who is a well driller or pump installer on the effective date of this Act is deemed to be ~~registered licensed~~.

4. Examinations. After January 1, 1994, a person must successfully complete a written examination administered by the commission in order to:

A. Initially ~~register~~ be licensed as a journeyman or master pump installer or as a journeyman or master well driller;

B. Upgrade from an apprentice to a journeyman well driller or an apprentice to a journeyman pump installer; and

C. Upgrade from a journeyman to a master well driller or a journeyman to a master pump installer.

A person licensed under chapter 49 as a master plumber is not required to complete an examination to perform the work of a pump installer.

Sec. B-11. 32 MRSA §4700-J, as repealed and replaced by PL 1993, c. 25, §12, is amended to read:

§4700-J. Licensure; well drillers and pump installers

Effective January 1, 1994, a person may not engage in the business of constructing water wells within the State or engage in the ~~initial~~ installation, replacement or repair of a pump in a water well unless ~~registered~~ licensed with the commission. An applicant for ~~registration licensure~~ must complete a registration an application form supplied by the commission, successfully complete any examination required by this chapter and pay an annual ~~registration~~ license fee established by the commission.

The person so ~~registered licensed~~ shall display on each side of the drilling rig or the pump installer vehicle a seal issued by the commission indicating that person's ~~registration~~ license number and the current year of ~~registration~~ licensure. A person licensed under chapter 49 as a master plumber is not required to ~~register~~ be licensed with the commission to perform the work of a pump installer.

Sec. B-12. 32 MRSA §4700-L, as enacted by PL 1991, c. 455, Pt. B, §1, is repealed and the following enacted in its place:

§4700-L. Penalties

1. Fine. Any person, company, firm, partnership or corporation who installs, alters, repairs or replaces a water well or pump system without being licensed as provided in this chapter or in violation of the code of performance adopted by the Maine Water Well Commission pursuant to section 4700-A, subsection 5, except for an apprentice well driller or an apprentice pump installer as set forth in this chapter, or any person, firm, partnership or corporation who procures a license as provided in this chapter wrongfully or by fraud commits a civil violation punishable by a fine of not more than \$1,000.

2. Injunction. The State may bring action in Superior Court to enjoin any person, firm, partnership or corporation from violating this chapter, regardless of whether proceedings have been or may be instituted in the District Court or whether civil proceedings have been or may be instituted.

3. Exclusion. This chapter does not prevent a person from making water well or pump system installations, alterations, repairs or replacements in a single-family residence occupied by that person or to

be occupied by that person as a bona fide personal abode, providing the installation, alternation, repair or replacement conforms to the standards set forth in this chapter and any rules adopted by the commission or the department.

Sec. B-13. 32 MRSA §4700-M, as enacted by PL 1993, c. 25, §13, is amended to read:

§4700-M. Reciprocity

The commission may issue a registration license without examination, in a comparable classification, to any person who holds a registration or license in any state, territory or possession of the United States or any country, if the commission determines that the requirements for registration or licensure of well drillers or pump installers under which the person's registration or license was issued do not conflict with this chapter or the code of performance adopted by the commission under this chapter.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective May 18, 2001.

CHAPTER 210

S.P. 324 - L.D. 1092

An Act to Prohibit Negative Option Sales Without a Consumer's Express Agreement

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

Sec. 1. 10 MRSA c. 205-A is enacted to read:

CHAPTER 205-A

REQUIRED DISCLOSURES TO CONSUMERS

§1210. Charges after trial period

In a sale agreed to by telephone, a merchant may not charge a consumer for a good or service after a trial period unless, prior to the charge, the consumer expressly agrees to be charged for the good or service if the consumer does not cancel the sale. At least 15 days prior to any charge, or 10 days prior to any charge if the good or service for which the consumer will be charged is physically delivered to the consumer on a weekly or more frequent basis, the merchant shall provide a consumer with a clearly written description of the agreement, the good or service being purchased, the amount being charged and the calendar date the consumer will be charged for

the good or service if the consumer does not cancel the sale. This notice also must provide the specific steps by which the consumer can cancel the agreement by both mail and telephone. The merchant has the burden of proving that the consumer expressly agreed to this arrangement and that the required written notices were provided within the time limits set forth in this section.

§1210-A. Violation

A merchant who violates this chapter commits an unfair and deceptive act and a violation of Title 5, section 207.

See title page for effective date.

CHAPTER 211

H.P. 1271 - L.D. 1729

An Act to Amend the Maine Banking Code

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

Sec. 1. 9-B MRSA §162, sub-§§2 and 3, as amended by PL 1997, c. 537, §1 and affected by §62, are further amended to read:

2. Disclosure in response to legal process. The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order that meets the requirements of section 163; ~~or~~

3. Disclosure in response to a request by the Department of Human Services. The financial records are disclosed in response to a request for information by the Department of Human Services for purposes related to establishing, modifying or enforcing a child support order; ~~or~~

Sec. 2. 9-B MRSA §162, sub-§4 is enacted to read:

4. Disclosure in response to a request by the Department of Labor. The financial records are disclosed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233.

Sec. 3. 9-B MRSA §214, sub-§2-B, as enacted by PL 1997, c. 398, Pt. K, §1, is amended to read:

2-B. Assessment on nondepository trust companies. Nondepository trust companies that are not affiliated with a financial institution shall pay an annual assessment of not less than \$2,000 or an amount determined by the superintendent ~~not to exceed~~ of at least 6¢ for every \$10,000 of fiduciary