

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

**Whereas**, the above-named major substantive rule has been submitted to the Legislature for review; and

**Whereas**, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

**Sec. 1. Adoption. Resolved:** That final adoption of portions of Chapter 360: Responsibilities of Manufacturers, Distributors, Dealers and Redemption Centers under the Returnable Beverage Container Law, a provisionally adopted major substantive rule of the Department of Agriculture, Food and Rural Resources that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if:

1. Section 3, subsection A is amended to provide an exception to the annual license fee so that initiators of deposit that are small bottlers and brewers as described in Title 32, section 1866, subsection 4, paragraph D are required to pay only a \$50 annual license fee;

2. Section 9 is amended to provide that a distributor designated in a qualified commingling agreement pursuant to Title 32, section 1866, subsection 4, paragraph C is required to pick up beverage containers for all distributors who are members in the commingling agreement each time the distributor makes a regularly scheduled delivery of beverages; and

3. Section 5 is amended to provide that any wine container that is required to have a deposit and refund value and that is marked by the manufacturer with a label consistent with section 5, subsection C is not required to have any additional label, sticker or marking.

The Department of Agriculture, Food and Rural Resources is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve.

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

Effective April 9, 2004.

## CHAPTER 127

H.P. 1372 - L.D. 1846

### Resolve, Regarding Legislative Review of Portions of Chapter 895: Underground Facility Damage Prevention Requirements, a Major Substantive Rule of the Public Utilities Commission

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

**Whereas**, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

**Whereas**, the above-named major substantive rule has been submitted to the Legislature for review; and

**Whereas**, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

**Sec. 1. Adoption. Resolved:** That final adoption of portions of Chapter 895: Underground Facility Damage Prevention Requirements, a provisionally adopted major substantive rule of the Public Utilities Commission that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made.

1. In the provision identified in the rule as Section 6(A)(1)(d) the language is modified to read substantially as follows:

d. Except as otherwise provided in this provision of the rule, each Dig Safe System member shall provide to the Dig Safe System the location of all underground facilities that the member would be obligated to mark upon receipt of notice pursuant to Section 6(B). The location must be identified either by association with a street or road, if the facility is within 100 feet of a street or road, or, if the facility is not within 100 feet of a street or road, with sufficient specificity to allow the Dig Safe System to determine the actual location of the facility within a tolerance of 133 feet and in a

manner consistent with Dig Safe System methodology. The member shall provide the information to the Dig Safe System to rely on for notification purposes and, unless otherwise specified in this rule, the member shall provide the information in a format that the Dig Safe System is capable of using, such as electronic or digital format, or by drawing the specific location of any underground facilities on maps provided by the Dig Safe System. Telephone utilities are not required under this provision to provide to the Dig Safe System the location of service drops from a main line to customer premises. The commission shall grant a waiver from this provision for any water utility transmission mains that are downstream of a treatment plant or underground water source and may require the water utility to provide the Dig Safe System with an alternative method of facility location specification, such as a corridor, for notification purposes.

2. A provision is added specifying that the provisions identified as Section 4(B)(1)(a)(ii), Section 6(A)(1)(d) and Section 7(A-1) do not take effect until May 1, 2005.

3. The provision identified in the rule as Section 5(B)(9) is amended to read substantially as follows:

9. The Dig Safe System shall restrict the use of facility location information provided by Maine operators to those uses required to perform its duties under this rule and will restrict access to the facility location information to those employees of the Dig Safe System performing such duties. Access to Maine facility location information shall not be available to the general public by electronic or digital technology or by copies of maps or plans. The Dig Safe System shall use reasonable care to maintain all facility location information provided by Maine operators in a secure manner and the commission may initiate an appropriate investigation to review security protocols.

The commission is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve.

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

Effective April 9, 2004.

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## CHAPTER 128

S.P. 648 - L.D. 1716

### Resolve, Regarding Participation in the Federal No Child Left Behind Act of 2001

**Sec. 1. Prohibition on use of state funds; exceptions. Resolved:** That, in order to give priority to the implementation of Maine's system of learning results, and consistent with Title IX, Part E, Subpart 2, Section 9527 of the federal No Child Left Behind Act of 2001, the Department of Education may not spend any state funds or incur any costs not paid for under the federal No Child Left Behind Act of 2001 in order to comply with the provisions of the act, except for state funds necessary to act in accordance with sections 2, 3, 4 and 5 of this resolve; and be it further

**Sec. 2. Administration of federal education funds. Resolved:** That the Department of Education may administer such federal funds as may be made available to the State under Public Law 89-10, known as the federal Elementary and Secondary Education Act of 1965, as amended by Public Law 107-110, known as the federal No Child Left Behind Act of 2001. Those funds may be accepted and must be distributed and accounted for by the Department of Education in accordance with the federal No Child Left Behind Act of 2001 and federal regulations issued under provisions of that act even if there is conflict between that act or those regulations and the statutes and rules of this State; and be it further

**Sec. 3. Compliance with federal requirements of No Child Left Behind Act of 2001. Resolved:** That, notwithstanding the provisions of the Maine Revised Statutes, Title 20-A related to the implementation of Maine's system of learning results, and in order to comply with the provisions of the federal No Child Left Behind Act of 2001 during the 2003-2004 and 2004-2005 school years, the Commissioner of Education is authorized to determine annually whether schools are meeting state standards, and the Department of Education is authorized to impose consequences allowed in state law and required by the federal No Child Left Behind Act of 2001 within the time frame required in that act. The Department of Education may expend other state funds for activities the department was already conducting consistent with the federal No Child Left Behind Act of 2001, or for activities already authorized in the budgets for fiscal years 2003-04 and 2004-05. It is the intent of the Legislature that the Department of Education continue to study the