

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

producer's or licensee's debts in accordance with section 1017.

Sec. 5. 7 MRSA §1026, as repealed and replaced by PL 1977, c. 696, §84, is amended to read:

§1026. Enforcement

The commissioner may recover the penalties imposed for violations of this Article and any rules and regulations promulgated thereunder in a civil action brought in ~~his~~ the commissioner's own name, the venue to be as in other civil actions and, if ~~he~~ the commissioner prevails in that action, ~~he~~ the commissioner may recover full costs, including, but not limited to, attorney's fees. The commissioner ~~shall be~~ is entitled to ~~and shall receive~~ the assistance of the Attorney General and of the several district attorneys.

Sec. 6. 7 MRSA §1028, as repealed and replaced by PL 1977, c. 696, §86, is amended by adding at the end a new paragraph to read:

Each day a violation under this section remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation.

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

Effective June 8, 2005.

CHAPTER 334

H.P. 254 - L.D. 331

**An Act To Improve the Operation of
Underground Damage Prevention
Procedures**

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

**Sec. 1. 23 MRSA §3360-A, sub-§§5-G and
5-H** are enacted to read:

5-G. Alternative notice requirement procedures for excavations; rulemaking. The Public Utilities Commission may by rule extend alternative notice requirements established for excavation associated with drinking water well construction pursuant to subsection 5-F to other types of excavation. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

5-H. Newly installed underground facilities in active excavation areas; rulemaking. The Public Utilities Commission shall by rule establish procedures to reduce the incidence of damage to newly

installed underground facilities in active excavation areas as defined by the commission by rule. In establishing the rule, the commission may consider adopting additional requirements for excavators or operators, including renotification and marking requirements and system notification procedures. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 23 MRSA §3360-A, sub-§6-C, as amended by PL 2003, c. 505, §3, is further amended to read:

6-C. Penalties. 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. Before 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 subsection 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 subsection 4;

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

F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D or 5-E.

The commission shall establish by rule standards for when and at what level penalties must be assessed under this subsection. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 23 MRSA §3360-A, sub-§§13 and 14 are enacted to read:

13. Rules. The Public Utilities Commission may adopt rules necessary to implement this section. Except as otherwise specified in this section, rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

14. Discovered facilities. When an underground facility is discovered during an excavation and the location of that facility was, prior to the discovery, unknown or unclear to the underground facility operator, the Public Utilities Commission may direct that operator to determine and map the location of the facility for a reasonable distance, as determined by the commission, from the point of discovery.

Sec. 4. Existing rules. Rules adopted by the Public Utilities Commission relating to the subject matter of the Maine Revised Statutes, Title 23, section 3360-A prior to the effective date of this Act remain in effect and do not require further authorization by the Legislature. Any changes to such existing rules are subject to the major substantive rule requirements of Title 5, chapter 375, subchapter 2-A.

Sec. 5. Rules concerning penalty standards. In adopting rules to establish standards for when and at what level penalties must be assessed pursuant to the Maine Revised Statutes, Title 23, section 3360-A, subsection 6-C, the Public Utilities Commission shall consider the requirement of that subsection that before imposing any penalties under that 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 shall also consider the seriousness of the violation and its impact on those served by the underground facility.

See title page for effective date.

CHAPTER 335

S.P. 342 - L.D. 1002

An Act To Transfer Responsibility from the Potato Marketing Improvement Committee to the Maine Potato Board

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

Sec. 1. 5 MRSA §12004-H, sub-§10, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. 2. 7 MRSA §972, as amended by PL 2001, c. 125, §1, is repealed.

Sec. 3. 7 MRSA §972-A is enacted to read:

§972-A. Advisory role of Maine Potato Board

The Maine Potato Board, established in Title 36, section 4603 and referred to in this article as "the board," shall advise the commissioner on the development and implementation of programs and activities that improve the economic viability of the potato industry. The board shall also advise the commissioner concerning the funding and expenditures of the Potato Marketing Improvement Fund created pursuant to Title 10, section 1023-N. The board shall make recommendations to the commissioner on authorized uses of the fund and activities relating to the fund other than activities relating to the processing of loan applications or the servicing and administration of loans.

Sec. 4. 7 MRSA §974-A, sub-§1, ¶D, as enacted by PL 1987, c. 319, §4, is amended to read:

D. Other terms and conditions prescribed by rule by the commissioner upon consultation with the ~~Potato Marketing Improvement Committee board.~~

Sec. 5. 7 MRSA §975-A, as amended by PL 1997, c. 388, §3, is further amended to read:

§975-A. Interest on Potato Marketing Improvement Fund balance

All or any portion of the interest earned or accruing on the cash balance of the Potato Marketing Improvement Fund may be used for grants to partially or fully fund research projects to study and assess technical problems experienced with new and retrofitted storage facilities and to develop means of dealing with such problems, or to examine, monitor and develop new technologies for the production, storage and handling of potatoes or to fund programs