

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY

H.P. 1358 - L.D. 1892

**An Act To Make Changes to the So-called Dig Safe Law**

**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 September 16, 2019 explosion in Farmington demonstrates the tragic consequences that can result from unmarked underground liquefied propane gas pipes; and

**Whereas,** the exemption of certain underground liquefied propane gas facilities from the so-called dig safe law poses a clear danger to excavators and the public; and

**Whereas,** this legislation must take effect before the expiration of the 90-day period to address, as soon as possible, this significant safety risk by making liquefied propane gas distribution systems that have underground pipes subject to the so-called dig safe law; 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:**

**Sec. 1. 23 MRSA §3360-A, sub-§1, ¶E,** as amended by PL 2011, c. 588, §2, is further amended to read:

E. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. This definition Except for liquefied propane gas distribution systems that have underground pipes, "underground facility" does not include liquefied propane gas distribution systems that are not included within the scope of 49 Code of

Federal Regulations, Part 192 and. "Underground facility" does not include highway drainage culverts or under drains.

**Sec. 2. 23 MRSA §3360-A, sub-§6-C**, as amended by PL 2011, c. 588, §9, 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 on any person who violates this subsection. The administrative penalty may not exceed ~~\$500~~ \$1,000, 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~~ \$10,000. 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, 5-E, 5-I or 5-J.

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.

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