

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1117

H. P. 902

House of Representatives, March 17, 1977

On motion of Ms. Clark of Freeport, referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Enable Domestic Stock Insurance Companies to Acquire
Minority Interests and to Insure That Minority Shareholders Receive Fair
Value for Their Shares.**

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

24-A MRSA § 3486 is enacted to read:

§ 3486. Plans for acquisition of minority interests in domestic stock insurance companies and appraisal of stock of dissenting shareholders

1. Any parent corporation directly or indirectly owning at least 95% of the aggregate issued and outstanding shares of all classes of voting stock of a domestic stock insurance company or any such domestic stock insurance company whose voting stock is so owned may, pursuant to a plan for acquisition of minority interests in such subsidiary, acquire all of its remaining issued and outstanding shares of voting stock, by exchange of stock, other securities, cash, other consideration or any combination thereof.

2. The board of directors, trustees or other governing body of the parent corporation or the domestic stock insurance company may adopt a plan for the acquisition of minority interests in such subsidiary insurer. Every plan shall set forth:

A. The name of the company whose shares are to be acquired;

B. The total number of issued and outstanding shares of each class of voting stock of the company, the number of its shares owned by the parent corporation and, if either of the foregoing is subject to change prior to the effective date of acquisition, the manner in which any change may occur;

C. The terms and conditions of the plan, including the manner and basis of exchanging the shares to be acquired for shares or other securities of the parent corporation, for cash, other consideration, or any combination of the foregoing, the proposed effective date of acquisition and a statement clearly describing the rights of dissenting shareholders to demand appraisal;

D. If the parent corporation has adopted the plan and is neither a domestic corporation nor an authorized insurer, its agreement to be bound by this section with respect to the plan, its consent to the enforcement against it in this State of the rights of shareholders pursuant to the plan, and a designation of the superintendent as the agent upon whom process may be served against the parent corporation in the manner set forth in section 421 in any action or proceeding to enforce any such rights; and

E. Such other provisions with respect to the plan as the board of directors, trustees or other governing body deems necessary or desirable, or which the superintendent may prescribe.

3. Upon adoption of the plan, it shall be duly executed by the president and attested by the secretary, or the executive officers corresponding thereto, under the corporate seal of the parent corporation or the domestic stock insurance company which has adopted the plan, as the case may be. Thereupon, a certified copy of the plan, together with a certificate of its adoption subscribed by such officers and affirmed by them as true under the penalties of perjury and under the seal of the parent corporation or the domestic stock insurance company, as the case may be, shall be submitted to the superintendent for his approval. The superintendent shall thereupon consider the plan and, if satisfied that it complies with this section, is fair and equitable and not inconsistent with law, he shall approve the plan. If the superintendent disapproves the plan, notification of his disapproval, assigning the reasons therefor, shall be given in writing by him to the parent corporation or domestic stock insurance company that submitted the plan. No plan shall take effect unless the approval of the superintendent has been obtained.

4. If the superintendent approves the plan, the parent corporation or the domestic stock insurance company which has adopted the plan shall deliver to each person who, as of the date of delivery, is a holder of record of stock to be acquired pursuant to the plan, a copy of the plan, or a summary thereof approved by the superintendent, in person or by depositing the same in the post office, postage prepaid, addressed to the stockholder at his address of record. On or before the date of acquisition proposed in the plan, the parent corporation or the domestic stock insurance company which has adopted the plan shall file with the superintendent a certificate, executed by its president and attested by its secretary, or the executive officers corresponding thereto, and subscribed by such officers and affirmed by them as true under the penalties of perjury, and under the seal of the parent corporation or the domestic stock insurance company, as the case may be, attesting to compliance with this subsection.

5. Upon compliance with this section, ownership of the shares to be acquired pursuant to the plan shall vest in the parent corporation or the domestic

stock insurance company which has adopted the plan on the date of acquisition proposed in the plan whether or not the certificates for such shares have been surrendered for exchange. If the plan was adopted by the parent corporation it shall be entitled to have new certificates registered in its name. If the plan was adopted by the domestic stock insurance company the shares shall be retired and the capital of the domestic company reduced by the par value of the retired shares. Shareholders whose shares have been so acquired shall thereafter retain only the right either to receive the consideration to be paid in exchange for their shares pursuant to the plan or to dissent to the plan and demand appraisal and receive payment of the fair value of their shares as hereinafter provided. The fair value of shares shall be determined as of the day prior to the date on which the plan was adopted, excluding any appreciation or depreciation of shares in anticipation of such corporate action. A shareholder may not dissent as to less than all of the shares registered in his name.

6. A dissenting shareholder shall file, within 20 days after the delivery to him of either a copy of the plan or a summary thereof pursuant to subsection 4, a written notice of his election to dissent from the plan and a demand for payment of the fair value of his shares. Such notice and demand shall be filed with the company which adopted the plan by personally delivering it, or by mailing it via certified or registered mail, to such company at its registered office within this State or to its principal place of business or to the address given to the Secretary of State pursuant to Title 13-A, section 906, subsection 4, paragraph B.

7. At the time of filing his notice and demand for the payment of the fair value of his shares, or within 20 days thereafter, a dissenting shareholder shall surrender the certificate or certificates representing his shares to the company which adopted the plan.

8. Within 10 days after the expiration of the period provided in subsection 6 for the shareholder to file his notice and demand, the company which adopted the plan shall make a written offer to each dissenting shareholder to pay for such shares at a specified price deemed by such company to be the fair value thereof. Such offer shall be made at the same price per share to all dissenting shareholders of the same class. The notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer and a profit and loss statement of such corporation, for the 12-months' period ended on the date of such balance sheet.

9. If, within 20 days after the date by which the company is required by the terms of subsection 8 to make a written offer to each dissenting shareholder to pay for his shares, the fair value of such shares is agreed upon between any dissenting shareholder and the company, payment therefor shall be made within 90 days after the date of delivery of the plan or a summary thereof as provided in subsection 4. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares.

10. If, within the additional 20-day period prescribed by subsection 9, one or more dissenting shareholders and the company have failed to agree as to the fair value of the shares, then Title 13-A, section 909, subsections 9, 11, 12 and 13, shall be applicable, except that:

A. The term "the corporation" as used therein shall be deemed to refer to the company which adopted a plan pursuant to subsection 2;

B. The reference in Title 13-A, section 909, subsection 9, paragraph G to the date on which a vote was taken on the proposed corporate action shall be deemed to refer to the date on which a plan was adopted pursuant to subsection 2;

C. The references in Title 13-A, section 909, subsection 11 to a shareholder's "objection" and "demand" and the reference in Title 13-A, section 909, subsection 13 to a shareholder's "demand for payment" shall be deemed to refer to a shareholder's notice and demand filed pursuant to subsection 6;

D. The references in Title 13-A, section 909, subsection 9 to "the date on which such corporate action was effected" shall be deemed to refer to the date of delivery of the plan or a summary thereof as provided in subsection 4;

E. The reference in Title 13-A, section 909, subsection 9, paragraph A to the county in the State where the registered office of the corporation is located shall be deemed, where the parent corporation which has adopted the plan is neither a domestic corporation or an authorized insurer, to include the county where the registered office of the subsidiary domestic stock insurance company whose stock is being acquired is located;

F. The reference in Title 13-A, section 909, subsection 9, paragraph E to "this section" shall be deemed to include this section; and

G. The references in Title 13-A, section 909, subsection 9 to "subsection 8" shall be deemed to refer to subsection 9.

11. If no action to determine the fair value of the shares of the dissenting shareholder is commenced within the time specified in Title 13-A, section 909, subsection 9, paragraph C, then the dissenting shareholder shall receive the consideration which was specified as payment in exchange for his shares pursuant to the plan. Such consideration shall be paid by the company within 60 days after the time within which an action can be commenced as specified in Title 13-A, section 909, subsection 9, paragraph C. Upon payment of such consideration, the dissenting shareholder shall cease to have any interest in such shares.

12. If the court determines pursuant to Title 13-A, section 909, subsection 9, paragraph E that a shareholder is not entitled to receive payment of the fair value of his shares because of his failure to satisfy the requirements of Title 13-A, section 909 and of this section, then the shareholder shall receive the consideration which was specified as payment in exchange for his shares pursuant to the plan. Such payment shall not include the allowance for interest specified in Title 13-A, section 909, subsection 9, paragraph G.

13. Neither the right granted by this section nor the exercise thereof by a parent corporation or domestic stock insurance company shall preclude the exercise by it of any other rights it may have under this section.

14. The provisions of Title 13-A, section 525, regarding unclaimed dividends and other distributions to shareholders shall apply to any unclaimed payment to which a shareholder may be entitled under this section.

15. All laws and parts of laws of this State inconsistent with this section are superseded with respect to matters covered by this section.

STATEMENT OF FACT

The intent of this bill is to permit domestic stock insurance companies to acquire minority interests where such domestic stock insurance companies own at least 95% of all voting stock. The bill establishes procedures whereby minority stockholders are assured of receiving a fair value for their shares.