

MAINE STATE LEGISLATURE

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D. OF R.

L.D. 2056
(Filing No. S-527)

STATE OF MAINE
SENATE
108TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 665, L.D. 2056, Bill,
"AN ACT to Establish the Maine Corporation Takeover Bid
Disclosure Law."

Amend the Bill by striking out all of the title and
inserting in its place the following:

'AN ACT to Establish the Maine Takeover Bid Disclosure Law.'

Further amend the Bill by striking out everything after
the title and inserting in its place the following:

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

Whereas, immediate action may be necessary for the
protection of Maine corporations and their shareholders and the
general public; and

Whereas, it is vital to the protection of shareholders of
Maine corporations and corporations residing in Maine to prevent
fraud and deception in connection with takeover bids; 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:

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13 MRSA c. 23 is enacted to read:

CHAPTER 23

TAKEOVER BID DISCLOSURE LAW

§801. Short title; legislative findings

This chapter shall be known and may be cited as the
"Maine Takeover Bid Disclosure Law."

The Legislature finds, declares and recognizes that
legislation is necessary to provide adequate protection for
shareholders, Maine corporations and the public from the use of
takeover offers without first receiving full and fair
disclosure of information concerning them. The Legislature
further finds and declares that persons making tender offers
for the control of target companies under this ~~chapter~~ ^{should be}
be required to disclose fully and accurately the terms of the
offers, and that it is a matter of urgent state interest to
provide adequate time for the dissemination and consideration
of the information.

§802. Definitions

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

1. Affiliate. "Affiliate" of a specified person means
any person who, directly or indirectly, controls or is controlled
by or is under common control with the person specified,

2. Assets. "Assets" shall mean a person's assets or consolidated assets as presented on its latest, audited financial statement in accordance with generally accepted accounting principles.

3. Associate. An "associate" of a person means:

A. Any corporation or other organization of which that person is an officer, director or partner, or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities;

B. Any person who is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities of that person;

C. Any trust or estate in which that person has a substantial beneficial interest or as to which that person serves as trustee or serves in a similar fiduciary capacity;

D. The spouse of that person, or any relative of that person or of that spouse who has the same home as that person; or

E. Any person acting jointly or in concert with the offeror for the purpose of acquiring, holding, disposing of or exercising any voting rights attached to the equity securities of a target company.

4. Control. "Control" including the terms "controls" "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or acts of a person whether through ownership of voting securities, by contract, agreement or otherwise.

5. Cost of mailing. "Cost of mailing" with respect to any mailings to shareholders means the product of the first class postal rate for letters multiplied by the number of shareholders entitled to notice.

6. Equity security. "Equity security" means:

A. Any stock or similar security carrying, at the time of a takeover offer, the right to vote on any matter by virtue of the articles of incorporation, bylaws or governing instrument of a person or the right to vote for directors or persons performing substantially similar functions by operation of law;

B. Any security convertible into stock or a similar security, as described in paragraph A;

C. Any warrant or right to purchase stock or a similar security, as described in paragraph A;

D. Any security carrying any warrant or right to purchase stock or similar security, as described in paragraph A; or

E. Any other security which for the protection of investors is deemed an equity security pursuant to the regulation of the Superintendent.

7. Number of shares. "Number of shares" means, with respect to any equity security which is not stock or a similar security, the number of shares of stock or a similar security, as described in paragraph A:

← A. Into which that security is convertible; or

← B. Which that equity security evidences or carries the right to purchase.

8. Offeree. "Offeree" means a record or beneficial owner of any equity security which an offeror acquires or offers to acquire in connection with a takeover offer.

9. Offeror. "Offeror" means a person who makes or in any way participates in making a takeover offer and includes all affiliates and associates of that person. The term does not include a financial institution or broker-dealer loaning funds or extending credit to any offeror in the ordinary course of its business or any accountant, attorney, financial institution, broker-dealer, newspaper or magazine of general circulation, consultant or other person furnishing information, services or advice to or performing ministerial or administrative duties for an offeror and not otherwise participating in the takeover bid.

10. Offeror's presently owned shares. An "offeror's presently owned shares" is the aggregate number of shares of a target company which are on the date of the takeover bid owned of record, beneficially owned or subject to a right of acquisition, directly or indirectly, by the offeror and each associate or affiliate of the offeror.

11. Person. "Person" includes an individual, partnership, corporation, unincorporated association, trust or other entity.

12. Security holder. A "security holder" of a specified person is one who owns any equity security of that person.

13. Shares. "Shares" means and includes any equity security, however its units are denominated.

14. Substantial Portion of Total Assets. "Substantial portion of total assets" of a person means \$5,000,000 or more in assets, including assets of its affiliates, provided those assets:

A. constitute 20% or more of the total assets of the person and its affiliates; or

B. generate 20% or more of the total sales or operating revenues of the person and its affiliates.

15. Superintendent. "Superintendent" means the Superintendent of Banking or his designee.

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16. Takeover bid or takeover offer. A"takeover bid or takeover offer:"

A. ←————— is an offer of cash, securities, or both, made by an offeror directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares of any class of equity securities of the target company that:

(1) Together with the offeror's presently owned shares of that class, will in the aggregate exceed 5% of the outstanding shares of the class; or

(2) Together with an offeror's presently owned shares of all classes of equity securities of the target company, will in the aggregate, after giving effect to all conversion and purchase rights held and to be acquired by the offeror, exceed 5% of the number of shares of stock or a similar security of the target company which will be outstanding; and

B. ←————— does not include, with respect to any class of equity securities of a target company:

- (1) An isolated offer to purchase shares from not more than 10 individual shareholders during any period of 12 consecutive months, not made to shareholders generally;
- (2) An offer made by an issuer to purchase its own shares or shares of a subsidiary;
- (3) An offer to purchase shares of a class not registered pursuant to Section 12 of the Securities Exchange Act of 1934;
- (4) An offer effected by or through a broker-dealer in the ordinary course of his business without solicitation of orders to sell equity securities of the target company;
- (5) An offer, if the acquisition by the offeror, in the instant transactions and in all acquisitions of equity securities of the same class during the preceding 12 months, does not exceed 2% of that class of outstanding equity securities of the target company; or
- (6) An offer to purchase shares of a company whose assets do not exceed \$5,000,000.

"Takeover offer" and "takeover bid" shall be wholly synonymous and interchangeable terms.

17. Target company. "Target company" is any corporation or other issuer of securities which is either organized under or pursuant to the laws of the State or which has a substantial portion of its assets in this State. A target company does not include:

- A. An insurer subject to the provisions of Title 24-A;
- B. A financial institution subject to ^{Title} 9-B; or
- C. A public utility subject to regulation by the Public Utility Commission.

§803. Disclosure

1. Filing requirements. No offeror shall make a takeover bid unless, at least 20 days before the takeover bid is made, the offeror has filed with the Superintendent and has sent by certified mail to the target company at its principal office a statement containing the information required by this section and the takeover bid has been permitted to proceed by order of the Superintendent in the manner hereinafter prescribed in this chapter. The material terms of the proposed offer shall be publicly disclosed by the offeror to the leading wire services for the financial press.

2. Disclosure statement; filing. The disclosure statement shall be filed on forms prescribed by the Superintendent, and shall be accompanied by a consent by the offeror to service of process and the filing fee specified in section 811 and shall contain the following information and such additional information as the Superintendent by regulation prescribes:

- A. The name and address of the offeror;
- B. The number of shares to be purchased;
- C. The consideration to be offered;
- D. The duration of the offer;
- E. Whether the offeror will unconditionally accept all or any part of the shares tendered;
- F. The conditions upon which acceptance will be made;
- G. Plans with respect to changes of operation of the target company in Maine, including:
 - (1) Changes in level of employment;
 - (2) Management changes; and
 - (3) Changes in suppliers of material and services to and from Maine businesses;
- H. Disclosure of acquisition of corporations in the last ten years and changes of operations with respect to them;
- I. Any alleged violation by the offeror of state or federal law or regulations including environmental, safety and labor relations matters, which is the subject of any pending court or administrative proceeding;

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J. Information concerning purchases of stock of the target company by the offeror during the past six months prior to the date of filing, including seller, price paid, date and any contractual arrangements;

K. The other contractual terms of the offer; and

L. All the information required under the provisions of the Securities Exchange Act of 1934 and the applicable rules and regulations promulgated under the Securities Exchange Act of 1934 with respect to tender offers, prior to making a tender offer, to be:

(1) Contained in a tender offer for, or request or invitation for tenders of, securities published or sent or given to security holders; and

(2) Filed with the Securities and Exchange Commission, under the provisions of the Securities Exchange Act of 1934 and the applicable rules and regulations promulgated under the Securities Exchange Act of 1934 with respect to tender offer

If the person required to file the statement referred to in subsection 1 is a partnership, limited partnership, syndicate or other group, the Superintendent may require that the information

in subsection 2, called for ✓ paragraphs A through L, shall be given with respect to each partner of that partnership or general partner of that limited partnership, each member of that syndicate or group, and each person who controls that partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection 1 is a corporation, the Superintendent may require that the information called section 2, for ✓ paragraphs A through L, shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the Superintendent and sent to that target company pursuant to this section, an amendment setting forth that change shall be filed with the Superintendent and sent to that target company within 2 business days after the person learns of that change.

§804. Permission to proceed; hearings

1. Takeover bid. The Superintendent shall by order permit any takeover bid referred to in section 803, subsection 1, to proceed unless, after a public hearing thereon referred to in subsection 2, he finds that:

A. The financial condition of the offeror is such as to jeopardize the interests of any security holders who are unaffiliated with the offeror;

B. The terms of the takeover bid are unfair or inequitable to the security holders of the target company;

C. The plans and proposals which the offeror has, to make any material change in the target company's business or corporate structure of management, are not in the interest of the target company's remaining security holders;

D. The competence, experience and integrity of those persons who would control the operation of the target company are such that it would not be in the interest of the target company's remaining security holders to permit the takeover;

E. The terms of the takeover bid do not comply with this chapter; or

F. The information required to be included in the disclosure statement filed pursuant to section 803 has not been fully and fairly disclosed in all material respects.

2. Public hearing. A public hearing shall be held at a time and place fixed by the Superintendent if, within 20 days after the filing of the statement referred to in section 803, subsection 1, he shall determine that such a public hearing is necessary and if, within 20 days after the filing of the statement, he shall schedule a date for such public hearing. Written notice of that determination and hearing date shall be promptly sent to the offeror and the target company by the Superintendent. At least 10 days' notice of the holding of any public hearing shall be given by the Superintendent to the offeror filing the statement and to the target company. Any public hearing shall be scheduled and held expeditiously and promptly on a priority basis. No less than 7 days' notice of the public hearing shall be given by the offeror filing the statement to such other persons as may be designated by the Superintendent. The target company shall give that notice to its security holders. The Superintendent shall make a determination within 20 days after the conclusion of the hearing. The failure to make a determination within 20 days after the conclusion of that

hearing shall render effective the original registration or filing by the offeror. At the hearing, the offeror filing the statement, the target company and any other person the Superintendent determines has sufficient interest shall have the right to present evidence, examine and cross-examine witnesses and offer oral and written argument, and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is allowed in the Superior Court of this State, or pursuant to such other procedure as may be established by the Superintendent. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of public hearings.

¶ 3. Reciprocity. The Superintendent may refuse to permit a takeover bid to proceed if the takeover bid is the subject of a stop order or cease and desist order in any other jurisdiction with a law substantially similar to this Act.

§805. Mailing to shareholders; payment of expenses

To the extent permitted by applicable federal laws, rules and regulations, all notices of public hearings held pursuant to section 804 shall be mailed by the target company to its shareholders within 5 business days after the target company has received that notification from the Superintendent. The cost of mailing shall be borne by the offeror making the filing. As security for the payment of those expenses, the offeror shall file with the Superintendent an acceptable bond or other deposit in an amount to be determined by the Superintendent.

§806. Time for filing

1. Copies. Copies of all advertisements, circulars, letters or other materials published by the offeror or the target company soliciting or requesting the acceptance or rejection of the takeover offer, with the exception of the initial press release by the offeror to the wire services announcing the intention to make a takeover offer, shall be filed with the Superintendent and sent to the target company or offeror, respectively, not later than the

time copies of such solicitation or recommendation are first published or sent or given to offerees.

2. Materials. The materials described in subsection 1 shall not contain any untrue statement of material fact nor omit to state a material fact necessary to make the statements contained in the material not misleading, in light of the circumstances under which they were made. The Superintendent may by order prohibit the use of any materials deemed false or misleading.

§807. Investigations

1. Investigations by the Superintendent. The Superintendent may make any investigations within or outside of this State which he deems necessary to determine whether any person has violated or is about to violate \longleftrightarrow this chapter or any order of the Superintendent. The Superintendent shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of that investigation.

2. Investigation; refusal to answer questions. If, in the course of any investigation or hearing conducted by the Superintendent pursuant to this chapter, a person refuses to answer a question or questions or produce evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the Superintendent may order the person to answer the question or questions or produce the requested evidence and confer immunity as provided in this section. If, upon issuance of that order, the person complies therewith, he shall be immune from having that responsive answer given by him or that responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that the person may nevertheless be prosecuted for any perjury committed in answer or in producing the evidence, or for contempt for failing to give an answer or produce evidence in accordance with the order of the Superintendent and any answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for contempt.

§808. Prohibited acts

No person shall engage in any fraudulent, deceptive or manipulative acts or practices in connection with a takeover offer. Fraudulent, deceptive and manipulative acts or practices include, without limitation:

1. Solicitation for acceptance or rejection. Solicitation of any offeree for acceptance or rejection of takeover offer, or

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acquisition of any equity security of a target company, pursuant to a takeover offer which has not been permitted to proceed or which is not exempt under this chapter;

2. Publication or use. Publication or use in connection with a takeover bid of any untrue statement of material fact or omission or failure to state a material fact which is necessary in order to make the statements made not misleading in light of the circumstances under which they were made, but do not include the mailing by a target company to the record or beneficial owners of its equity securities of solicitaton materials published by an offeror;

3. Sales. Sale by an officer, director, affiliate or associate of a target company of all or any part of their equity securities to the offeror at a price higher than that to be paid to the offerees pursuant to the offer, unless the sales are made at the then existing market price; or

4. Acquisition. Acquisition by the offeror, after announcement of the takeover offer and prior to its termination, of equity securities of the target company otherwise than pursuant to the takeover offer.

§809. Takeover offer

1. Offer, withdrawal. An offer shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of any offeree at any time up to the 3rd day prior to the announced termination date, except as the Superintendent may otherwise prescribe by rule or order for the protection of the offerees. An offer shall remain open for a minimum time period of 20 days.

2. Limited offers. If an offeror makes a takeover offer for less than all the outstanding equity securities of any class, and if the number of securities deposited or tendered pursuant thereto is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

3. Takeover offer; terms varied. If an offeror varies the terms of a takeover offer before its expiration date by increasing the consideration offered to the offerees, the offeror shall pay the increased consideration for all equity securities accepted, whether the securities have been accepted by the offeror before or after the variation in the terms of the offer.

4. Injunctive proceeding. No offeror shall make or continue a takeover offer at any time when an administrative or injunctive proceeding has been brought by the Superintendent against the offeror for violation of this chapter that has not been finally determined.

5. Target company. An offeror may not make a takeover offer involving a target company which is not made to all the owners of equity securities of the target company.

§810. Voting of securities; restrictions
voting of securities.

1. No security of a target company acquired pursuant to a takeover bid in contravention of ← → this chapter or of any rule, regulation or order issued by the Superintendent hereunder may be voted at any shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the target company or unless a court of this State has so ordered. If a target company or the Superintendent has reason to believe that any equity security of the target company has been or is about to be acquired in contravention of this chapter or of any rule, regulation or order issued by the Superintendent hereunder, the target company or the Superintendent may apply to the Superior Court to enjoin any acquisition, to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of the shareholders and for other equitable relief as the nature of the case and the interests of the target company, its security holders or the public may require.

Restrictions.

2. In any case where an offeror has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the Superintendent hereunder, the Superior Court may, on such notice as the court deems appropriate, upon the application of the target company or the Superintendent seize or sequester any voting securities of the target company owned directly or indirectly by the offeror and issue any orders with respect thereto as may be appropriate to effectuate this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of target companies shall be deemed to be in this State.

§811. Promulgation of regulations

1. Administration. This chapter shall be administered by the Superintendent or his designee who may promulgate regulations necessary to carry out the purposes of this chapter, including regulations defining fraudulent, deceptive and manipulative acts and practices and other terms used herein.

2. Disclosure statement; filing fee. The Superintendent shall set a filing fee for a disclosure statement filed by an offeror. These fees may be set so as to raise sufficient revenue for funding the purposes of this chapter. Any balance of these funds shall not lapse but shall be carried forward to be expended for the same purposes in succeeding fiscal years.

3. Hearings; costs. In the case of any hearing conducted pursuant to section 804, the Superintendent may assess the parties in such proportions as he deems reasonable for all reasonable and necessary costs incurred as a result of such hearing. Costs include, but are not limited to, expert fees, reporters, clerical assistance, space rentals, travel expense, witness fees, materials and other costs incurred as a result of such hearing.

§812. Injunctions

1. Violation; action. Whenever it appears to the Superintendent that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter or any regulation or order adopted under this chapter, the Superintendent may investigate and issue orders and notices, including cease and desist orders and notices. In addition to all other remedies, he may bring an action in any Superior Court of this State in the name and on behalf of the State against any person or persons participating in or about to participate in a violation of this chapter or to enforce compliance. In any court proceedings, the Superintendent may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of any defendant and the defendant's employees or agents and the production of documents, books and records as may appear necessary for the hearing of the petition, to testify and give evidence concerning the acts or conduct or things complained of in the action. Upon a proper showing, the court may grant a permanent or preliminary injunction or temporary restraining order or may order rescission of any sales, tenders for sale, purchase or tender for purchase of equity securities determined to be unlawful under this chapter or any regulation or order of the Superintendent.

2. Action. Whenever any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter or any regulation or order adopted thereunder, the offeror, target company or any record or beneficial owner of an equity security of the target company may bring an action to enjoin that person from continuing or doing any act in violation of this chapter or to enforce compliance. Upon a proper showing, the court may grant a permanent or preliminary injunction or temporary restraining order or may order rescission of any sales, tenders for sale, purchases or tenders for purchase of equity securities determined to be unlawful under this chapter or any regulation or order of the Superintendent.

§813. Criminal penalties

1. Takeover offer without disclosure statement. Notwithstanding the provisions of Title I7-A, Section 4-A, any person who makes

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a takeover offer involving a target company without a disclosure statement required under section 803 may be imprisoned for a period not to exceed one year, or fined an amount not to exceed \$10,000, or both.

2. Misrepresentation of a material fact; penalty. Notwithstanding the provisions of Title 17-A, section 4-A, any person who, in connection with a takeover offer, knowingly makes or causes to be made to the Superintendent any representation of a material fact which he knows to be false, or knowingly withholds or causes to be withheld from the Superintendent any information the disclosure of which he knows is necessary, in light of the circumstances, to make not misleading other representations of material facts made or caused to be made by him to the Superintendent, may be imprisoned for a period of not less than one year nor more than 5 years, or fined an amount not to exceed \$50,000 or both.

3. Publication; penalty. Notwithstanding the provisions of Title 17-A, section 4-A, any person who in connection with a takeover offer knowingly publishes or causes to be published any representation of a material fact which he knows to be false, or knowingly omits to publish information which he knows is necessary, in light of the circumstances, to make not misleading other representations of material facts published or caused to be published by him, may be imprisoned for a period not less than one nor more than 5 years, or fined an amount not to exceed \$50,000, or both, provided <----- > this subsection shall not apply to the mailing by a target company to the record or beneficial owners of its equity securities of solicitation materials published by an offeror.

4. Penalty. Notwithstanding the provisions of Title 17-A, section 4-A, any person who knowingly violates any provision of this chapter for which a specific criminal penalty is not otherwise provided may be imprisoned for a period not to exceed one year, or fined an amount not to exceed \$10,000, or both.

§814. Civil penalties

In addition to any other sanctions herein or otherwise provided by law, the Superintendent, upon notice and hearing, may impose a penalty not exceeding \$10,000 for any violation of this chapter or of any rule or regulation duly issued hereunder. This penalty shall be recovered by and in the name of the Superintendent in a civil action in the Superior Court. Where any violation of this chapter or of any rule or regulation duly issued hereunder is of a continuing nature, each day during which that violation continues after the date fixed by the Superintendent in any order or notice for the correction or termination of that violation shall constitute an additional separate and distinct offense, except during the time an appeal from that order or notice may be taken or is pending.

§815. Rights and remedies

1. Equity security. Any offeror who purchases an equity security pursuant to a takeover offer not in compliance with this chapter or by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements not misleading, in light of the circumstances under which they were made, shall be liable to the person selling the security to him for damages. That person may sue either at law or in equity.

⌘—As used in this section, "damages" means an amount equal to the market value of the shares acquired by the offeror plus any dividends or interest paid thereon to the offeror or any person holding under him and minus the consideration received for the shares from the offeror. For the purpose of subsection 2, paragraph B, market value is the greater of the market value on the date the action is commenced or on the date of tender. For the purpose of subsection 5, market value is measured on the date when the offer to pay damages is made.

2. Recovery. An offeree who is entitled to recover pursuant to subsection 1 may bring a civil action:

- A. To recover such shares, if the offeror still owns them, together with all dividends or interest received thereon, costs and reasonable attorneys' fees, upon the tender of consideration received from the offeror; or
- B. For the substantial equivalent in damages.

3. Liability. Every person who directly or indirectly controls a person liable under subsection 2, every partner, principal executive officer or director of that person, every person occupying a similar status or performing similar functions and every employee of the person who materially aids in the act or transaction constituting the violation are also jointly and severally with and to the same extent as that person, unless the person liable hereunder proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

4. Tender. Any tender specified in this section may be made at any time before entry of judgment.

5. Liability. If any person subject to suit by reason of subsection 1 or 3 makes a written offer, before suit is brought, to return the shares taken up pursuant to the takeover bid, together with all dividends or interest received thereon, upon the tender of the consideration received from the offeror, or to pay damages if the offeror no longer owns the shares, an offeror is not entitled to maintain a suit under this section if he has refused or failed to accept the offer within 30 days of its receipt.

§816. Appeals procedure; judicial review

1. Appeal. Any person aggrieved by any act, determination, rule, regulation or any other action of the Superintendent pursuant to this chapter may appeal to the Superior Court pursuant to the Maine Rules of Civil Procedure, Rule 80B.

2. Filing of an appeal. The filing of an appeal pursuant to this section shall not stay the application of any rule, regulation, order or other action of the Superintendent to the appealing party unless the court, after giving notice and an opportunity to be heard, orders a stay.

3. Superior Court action. Any person aggrieved by any failure of the Superintendent to act or to make a determination required by this chapter may commence an action in the Superior Court for an order directing the Superintendent to act or make the determination forthwith.

§817. Application of Law

1. Exception. If the target company is a public utility, public utility holding company, national banking association, bank holding company, savings and loan association or saving and loan holding company subject to regulation by a federal agency and the takeover of the company is subject to approval by that agency, this chapter shall not apply.

2. Joint hearings. Where a takeover bid or takeover offer subject to the filing requirements of section 803 is also subject to similar laws of another state, or to review by federal agencies or other state agencies, the Superintendent may, at his discretion, hold joint hearings and otherwise cooperate with state and federal agencies, provided the cooperation furthers the purposes of this chapter and does not impair the ability of the Superintendent to proceed and make all requisite findings under section 804.

3. Class vote; exception. This chapter shall not apply to any offer involving a class vote by shareholders of the target company, pursuant to its articles of incorporation or the applicable corporation statute, on a merger, consolidation or sale of corporate assets in consideration of the issuance of securities of another corporation, or sale of its securities in exchange for cash or securities of another corporation.

4. Applicability of Maine Securities Act. All of the provisions of the Maine Securities Act, Title 32, chapter 13, which are not in conflict with the provisions of this chapter, shall apply to any takeover offer subject to this chapter.

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

Statement of Fact

Already some 33 states have enacted statutes comparable to this amendment, all patterned after, or complementary to, the Federal Williams Act.

The amendment grants to the Superintendent of Banking limited powers of supervision over tender-offers for publicly traded shares of major employers in Maine.

The amendment requires advance notice and disclosure of the terms of a takeover bid and allows for hearings to determine whether a proposed takeover would prejudice the public interest or the interests of the shareholders of Maine corporations.

Reported by the Committee on Business Legislation.

Reproduced and distributed pursuant to Senate Rule 11-A.

March 9, 1978

(Filing No. S-527)