

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 2056

S. P. 665

In Senate, January 12, 1978

The Committee on Business Legislation suggested. Approved by Legislative Council pursuant to Joint Rule 24 and 2,000 ordered printed

MAY M. ROSS, Secretary

Presented by Senator Merrill of Cumberland.

Cosponsor: Senator Pierce of Kennebec

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-EIGHT

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**AN ACT to Establish the Maine Corporation Takeover Bid Disclosure Law.**

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

13 MRSA c. 23 is enacted to read:

**CHAPTER 23**

**TAKEOVER BID DISCLOSURE LAW**

§ 801. Short title

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

§ 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. 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.

3. Capital assets. "Capital assets" shall have the same meaning as that given to the term in Section 1221 of the Internal Revenue Code of 1954, as amended.

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" means the sum of the first class postal rate for letters, multiplied by the number of shareholders entitled to notice.

6. Department. "Department" means the Department of Business Regulation.

7. Equity security. "Equity security" means:

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

B. Any security convertible with or without consideration 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 commissioner.**

**8. 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 subsection 7, paragraph A:**

**A. Into which that security is convertible; or**

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

**9. 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.**

**10. 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.**

**11. 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 either beneficially owned or subject to a right of acquisition, directly or indirectly, by the offeror and each associate of the offeror.**

**12. Person. "Person" includes an individual, a partnership, a corporation, an unincorporated association or trust.**

**13. Security holder. A "security holder" of a specified person is one who owns any security of that person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.**

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

**15. Subsidiary. A "subsidiary" of a company is any corporation whose outstanding stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of that corporation, irrespective of whether or not at the time stock of any other class or classes of that corporation shall have or might have voting power by reason of the happening of any**

contingency, is at the time owned by that company directly or indirectly.

16. Substantial portion of total assets. "Substantial portion of total assets" means assets in excess of \$5,000,000 provided those assets:

- A. Constitute 25% or more of the total assets; or
- B. Generate 25% or more of the total sales or operating revenues.

17. A "Takeover bid or takeover offer".

A. A "takeover bid or takeover offer" is an offer 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 10% 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 10% of the number of shares of stock or a similar security of the target company which will be outstanding.

B. A "takeover bid" does not include, with respect to any class of securities of the target company:

- (1) An isolated offer to purchase shares from individual shareholders 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 made to not more than 10 persons in this State during any period of 12 consecutive months;
- (5) 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;
- (6) 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

(7) An offer to purchase shares of a company whose capital assets do not exceed \$5,000,000.

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

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

A. A domestic insurer subject to the provisions of Title 24-A; or

B. A financial institution subject to any court order issued under Title 9-B, chapter 36, or undergoing dissolution and liquidation pursuant to Title 9-B, chapter 36.

### § 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 department 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 the commissioner 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 commissioner, 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 commissioner by regulation, prescribes:

A. The identity of and material information concerning the offeror, including:

(1) If the offeror is a corporation, information concerning its organization, including the year and jurisdiction of its organization, a description of each class of its capital stock and long-term debt, a description of the business done by the offeror and its affiliates and any material changes therein during the past 3 years, a description of the location and character of the principal properties of the offeror and its affiliates, a description of any material pending legal or administrative proceedings in which the offeror or any of its affiliates is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past 3 years;

(2) If the offeror is not a corporation, information concerning the background

of the person, including his material business activities and affiliations during the past 3 years, and a description of any material pending legal or administrative proceeding in which that person is a party, as well as any conviction of crimes other than minor traffic violations during the past 10 years;

**B. The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities which are being offered in exchange for the equity securities of the target company, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the transaction and the names of all parties; provided that where a source of that consideration is a loan made by a banking institution in that lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;**

**C. Audited financial information as to the earnings and financial condition of the offeror for the preceding 5 fiscal years of that offeror or for such lesser period as that offeror and any predecessors thereof have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;**

**D. Any plans or proposals which the offeror may have to liquidate that target company, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management, with particular emphasis upon the changes that will occur within the State, and full details as to the manner in which the acquisition will be accounted for on the records of the offeror;**

**E. The number of shares or units of any equity security of the target company of which each offeror is the record or beneficial owner or which the offeror has a right to acquire, directly or indirectly;**

**F. Information as to any contracts, arrangements, understandings or negotiations with any person with respect to any equity security of the target company, including transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements or understandings have been entered into;**

**G. Information as to any contracts, arrangements, understandings or negotiations with any person who is an officer, director, administrator, manager, executive employee or record or beneficial owner of equity securities of the target company with respect to the tender of any securities of the target**

company, the purchase by the offeror of any equity securities owned by that person otherwise than pursuant to the takeover offer, the retention of any person in his present position or in any other management position or with respect to that person giving or withholding a favorable recommendation to the takeover offer;

H. A description of the provisions made or to be made for providing all material information concerning the takeover offer to the offerees, including a description of the proposed takeover offer in the form proposed to be published or sent to the offerees initially disclosing the takeover offer;

I. The number of shares of any security subject to the takeover bid which such offeror proposes to acquire, and the terms of the takeover bid referred to in subsection 1 and a statement as to the method by which the fairness of the proposal to the offerees was arrived at;

J. A description of the purchase of any security subject to the takeover bid, during the 12 calendar months preceding the filing of the statement, by that offeror, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor;

K. A description of any recommendations to purchase any security subject to the takeover bid, made during the 12 calendar months preceding the filing of the statement, by that offeror or by anyone, based upon interviews or at the suggestion of such offeror;

L. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities subject to the takeover bid and, if distributed, of additional soliciting material relating thereto;

M. The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities subject to the takeover bid for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto; and

N. Such additional information as the commissioner may by rule, regulation or order prescribe as necessary or appropriate for the achievement of the functions and objectives described in section 804.

If the person required to file the statement referred to in subsection 1 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs A through N shall be given with respect to each partner of that partnership or 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 commissioner may require that the information called for by paragraphs A through N 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 department and sent to that target company pursuant to this section, an amendment setting forth that change shall be filed with the department 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 commissioner shall 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 employees or 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 or management, are not in the interest of the target company's remaining security holders or employees;

**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, or employees to permit the takeover; or

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

**2. Public hearing.** A public hearing shall be held at a time and place fixed by the commissioner if, within 20 days after the filing of the statement referred to in section 803, subsection 1, he shall determine that a public hearing is necessary within 20 days after the filing of the statement, he shall schedule a date for the public hearing. Written notice of that determination and hearing date shall be promptly sent to the offeror and the target company by the commissioner. At least 10 days' notice of the holding of any public hearing shall be given by the commissioner 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 commissioner. The target company shall give that notice to its security holders. The commissioner 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 commissioner determines has sufficient interest shall have the right to present evidence, examine and cross-examine witnesses and offer oral and written arguments, 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 commissioner. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of public hearings.

#### § 805. Mailing 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 commissioner. 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 department an acceptable bond or other deposit in an amount to be determined by the department.

#### § 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 commissioner 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 commissioner may by order prohibit the use of any materials deemed false or misleading.

#### § 807. Investigations

1. Investigations by the department. The department may make any investigations within or outside of this State which it deems necessary to

determine whether any person has violated or is about to violate the provisions of this chapter or any order of the commissioner, and may require any person subject to the investigation to pay the actual costs of the investigation, including \$50 per day for the time of the investigator. The commissioner 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 commissioner 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 commissioner 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 commissioner 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 acquisition of any equity security of a target company pursuant to a takeover offer, that has not been permitted to proceed or exempt under this chapter;

2. Publication or use. Publication or use in connection with the offer of any untrue statement of material fact or omitting to state a material fact necessary to make the statement 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 solicitation materials published by an offeror;

3. Sales. Sale by any 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 commissioner may otherwise prescribe by rule or order for the protection of the offerees.

2. Takeover offer. 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 a takeover offer at any time when an administrative or injunctive proceeding has been brought by the commissioner 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 the owners of equity securities of the target company who are residents of this State.

§ 810. Voting of securities; restrictions

No security of a target company acquired pursuant to a takeover bid in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner 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 commissioner has reason to believe that any equity security of the target company has been or is about to be acquired in

contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder, the target company or the commissioner 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's security holders, employees, customers or creditors or of the public may require.

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 commissioner hereunder, the Superior Court may, on such notice as the court deems appropriate, upon the application of the target company or the commissioner 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 the provisions of 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 Commissioner of Business Regulation, 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 commissioner shall set a filing fee for a disclosure statement filed by an offeror and the same amount for a request for hearing filed by a target company. These fees may be set so as to raise sufficient revenue for funding the purposes of this chapter.

#### § 812. Injunctions

1. Violation; action. Whenever it appears to the commissioner 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 commissioner 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 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 commissioner 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 commissioner.

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 commissioner.

#### § 813. Criminal penalties

1. Takeover offer without disclosure statement. Notwithstanding the provisions of Title 17-A, section 4-A, any person who makes a takeover offer involving a target company without a disclosure statement required under section 803 may be imprisoned for not to exceed one year, or fined an amount not to exceed \$10,000, or both.

2. Representation 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 commissioner any representation of a material fact which he knows to be false, or knowingly withholds or causes to be withheld from the commissioner 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 commissioner, 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, however, 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 commissioner, 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 commissioner 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 commissioner 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 in connection with 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. 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 the 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, every employee of the person who materially aids in the act of transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation are also liable 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 liable 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 offeree 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 commissioner pursuant to this chapter may appeal to the Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

**2. Filing of an appeal.** The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that the stay would be detrimental to the interests of the target company's security holders, employees, customers or creditors or of the public.

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

#### § 817. Application of takeover bid disclosure law

**1. Notice to regulatory agency.** If the target company is a financial institution subject to regulation by the Bureau of Banking, or a public utility subject to regulation by the Public Utility Commission, the commissioner shall promptly furnish a copy of the registration statement filed under this chapter to the



regulatory agency having supervision of the target company. Any hearing under this chapter involving any such target company shall be held jointly with the regulatory agency having supervision, and any determination following the hearing shall be made jointly with that regulatory agency.

2. 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.

3. 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 commissioner 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 commissioner to proceed and make all requisite findings under section 804.

4. 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.

#### STATEMENT OF FACT

This bill is intended to provide a measure of protection to Maine workers, investors, creditors and others who might be impacted by a corporate takeover bid. Already some 28 states have enacted comparable statutes, all patterned after the Federal Williams Act.

The bill grants to the Commissioner of Business Regulation limited powers of supervision over tender-offers for publicly traded shares of major employers in Maine.

The bill 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 interests of local employees or jeopardize the financial stability of the target company.

Legitimate and fair tender offers should not be prevented: but state action is required to scrutinize the actions of "corporate raiders" which could have serious adverse effects on Maine's economy.