

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 **Legislative Document**

No. 1846

6
7 S. P. 778

In Senate, January 19, 1982

Approved for introduction by the Legislative Council pursuant to Joint Rule 26. Referred to the Committee on Judiciary and ordered printed. Sent down for concurrence.

MAY M. ROSS, Secretary of the Senate

8 Presented by Senator Devoe of Penobscot.

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 AN ACT to Establish the Uniform
16 Take-over Act.
17

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

19 10 MRSA c. 206-A is enacted to read:

20 CHAPTER 206-A

21 UNIFORM TAKE-OVER ACT

22 §1221. Short title

23 This Act may be cited as the Maine Uniform Take-over
24 Act.

25 §1222. Purpose

1 The purpose of this Act is to provide protection to
2 offerees and to the public by requiring that an offeror make
3 full, fair and effective disclosure of all material facts
4 necessary for the making of an informed decision about a
5 take-over offer and to provide substantive rights of with-
6 drawal and proration to offerees where such rights are not
7 accorded to them under federal law.

8 §1223. Definitions

9 As used in this Act, unless the context otherwise indi-
10 icates, the following terms have the following meanings.

11 1. Administrator. "Administrator" means the Securi-
12 ties Administrator of this State.

13 2. Affiliate. "Affiliate" means any person control-
14 ling, controlled by or under common control with another
15 person.

16 3. Associate. "Associate" means:

17 A. Any corporation or other organization of which the
18 offeror is an officer, director or partner, or is,
19 directly or indirectly, the record or beneficial owner
20 of 10% or more of any class of equity securities;

21 B. Any person who is, directly or indirectly, the
22 record or beneficial owner of 10% or more of any class
23 of equity securities of the offeror;

24 C. Any trust or other estate in which the offeror has
25 a substantial beneficial interest or for which the
26 offeror serves as a trustee or in a similar fiduciary
27 capacity; or

28 D. Any relative or spouse of the offeror or any rela-
29 tive of such spouse who has the same home as the
30 offeror.

31 4. Beneficial owner. "Beneficial owner" includes any
32 person who, directly or indirectly, through any contract,
33 arrangement, understanding, relationship or otherwise has,
34 shares or has the right to acquire:

35 A. Voting power which includes the power to vote, or
36 to direct the voting of, an equity security; or

1 B. Investment power which includes the power to dis-
2 pose, or to direct the disposition of, an equity secur-
3 ity.

4 5. Control. "Control," including the terms "control-
5 ling," "controlled by" and "under common control with,"
6 means the possession of the power to direct or cause the
7 direction of the management and policies of a person,
8 whether through the ownership of voting securities, by con-
9 tract or otherwise.

10 6. Equity securities. "Equity securities" means:

11 A. In the case of a corporation, any securities issued
12 by the corporation that represent an ownership interest
13 in the corporation and to which are attached the right
14 to vote on any matter, or any securities of the corpo-
15 ration that are convertible into such securities,
16 including any warrant or right to subscribe to or pur-
17 chase such securities; or

18 B. In the case of a subject company which is not a
19 corporation, any securities issued by that subject com-
20 pany that represent an interest in it and to which are
21 attached the right to vote on any matter, or any
22 securities issued by that subject company that are con-
23 vertible into such securities of it, including any
24 warrant or right to subscribe to or purchase those
25 securities.

26 7. Offeree. "Offeree" means a person who is a record
27 or beneficial owner of the equity securities of the subject
28 company for which a take-over offer is made.

29 8. Offeror. "Offeror" means a person who makes a
30 take-over offer and includes 2 or more persons:

31 A. Who make a take-over offer jointly or in concert;
32 or

33 B. Who intend to exercise jointly or in concert any
34 voting rights attached to the equity securities for
35 which a take-over offer is made.

36 9. Person. "Person" means an individual, a partner-
37 ship, a corporation, an unincorporated association, a trust
38 or any other entity or associate or affiliate of a person.

1 10. Take-over offer. "Take-over offer" means an offer
2 to purchase or a request or an invitation to tender made by
3 an offeror or his agent to offerees which, if accepted, will
4 result in the offeror becoming directly or indirectly the
5 record or beneficial owner of more than 5% of any class of
6 outstanding equity securities of the subject company.

7 11. Subject company. "Subject company" means an
8 issuer of equity securities organized under the laws of this
9 State whose equity securities are sought to be purchased in
10 a take-over offer. The administrator may promulgate by
11 order, rule or regulation any additional criteria, such as,
12 but not limited to, the number or percentage of offerees
13 residing in this State, that must exist before the issuer
14 may be deemed a "subject company."

15 12. Date of commencement. "Date of commencement"
16 means the earliest date on which a take-over offer is either
17 published, sent or given to offerees in a manner in which
18 offerees can tender their equity securities pursuant to the
19 take-over offer.

20 §1224. Exemptions from registration requirements

21 The following transactions are exempted from the regis-
22 tration requirements of this Act:

23 1. Offers to purchase equity securities. An offer made
24 by an issuer to purchase its own equity securities or the
25 equity securities of a subsidiary at least 2/3 of the equity
26 securities of which are owned either of record or benefi-
27 cially by the issuer;

28 2. Purchases by a registered broker. Purchases by a
29 broker registered with the Securities and Exchange Commis-
30 sion acting in an agency capacity to acquire any equity
31 security in a transaction on a stock exchange or in the
32 over-the-counter market if the broker performs only the cus-
33 tomary broker's function and receives no more than the cus-
34 tomary broker's commission, provided that such acquisition
35 is made by such broker in good faith and not for the purpose
36 of avoidance of section 1223, subsection 10 by the broker or
37 the principal and neither the principal nor the broker
38 solicits or arranges for the solicitation of orders to sell
39 equity securities of the subject company;

40 3. Offers to purchase equity securities from issuer
41 with limited shareholders. An offer to purchase equity
42 securities of an issuer having less than 100 stockholders of
43 record;

1 4. Offers to purchase 2% or less of outstanding equity
2 securities. An offer or offers to purchase equity securi-
3 ties which, if accepted, will result in the offeror purchas-
4 ing 2% or less of the outstanding equity securities of that
5 class during the preceding 12-month period;

6 5. Exempted offers. An offer which the administrator by
7 order, after notice to the offeror and to the subject com-
8 pany and opportunity to respond, shall exempt from this Act
9 as not being made, or to be made, for the purpose of, and
10 not having the effect of, or to have the effect of changing
11 or influencing the control of the subject company, or other-
12 wise as not comprehended within the purposes of this Act;
13 and

14 6. Offers subject to substantive administrative review.
15 An offer which is subject to substantive administrative
16 review of its terms and conditions by a federal or state
17 agency and which the administrator determines by rule, regu-
18 lation or order has met the purposes of this Act.

19 §1225. Registration statement and related filings

20 1. Take-over offers; registration statement required.
21 No person may make a take-over offer unless, as soon as
22 practicable on the date of commencement of the take-over
23 offer, a registration statement containing the information
24 required by subsection 2 has been filed with the administra-
25 tor and delivered to the subject company.

26 2. Contents of registration statement. The registra-
27 tion statement shall make full, fair and effective disclo-
28 sure of all material facts necessary for the making of an
29 informed decision about the take-over offer and shall be in
30 the form as may be prescribed by the administrator and shall
31 contain the following information:

32 A. A detailed description of the organization, capi-
33 talization and operations of the offeror, including:

34 (1) Its name and principal business address;

35 (2) The date, form and jurisdiction of its orga-
36 nization;

37 (3) A description of each class of its equity and
38 debt;

1 (4) The names of all directors and executive offi-
2 cers or those serving similar functions and a de-
3 scription of their material affiliations during
4 the past 5 years and a description of the approxi-
5 mate amount of any material interest, direct or
6 indirect, of any of such persons in any material
7 transaction during the past 5 years or any 'pro-
8 posed material transaction to which the offeror' or
9 any affiliate or associate was or is to be a
10 party;

11 (5) A description of the business of the offeror
12 and its affiliates and associates, the general
13 development of their businesses and any material
14 changes therein during the past 5 years;

15 (6) A description of the location and general
16 character of the principal properties of the
17 offeror and its affiliates and associates;

18 (7) A description of any pending judicial or
19 administrative proceeding, other than routine
20 litigation, to which the offeror or any affiliate
21 or associate is a party or to which any of their
22 property is subject, including any proceeding
23 which the offeror knows or has reason to know is
24 being contemplated by any governmental authority;

25 (8) A description of any judicial or administra-
26 tive proceeding during the past 5 years, other
27 than routine litigation, to which the offeror or
28 any affiliate or associate was a party and which
29 resulted in an adverse order, decree or judgment;

30 (9) A description of any criminal proceeding,
31 excluding traffic violations, in which the offeror
32 or any affiliate or associate or any officer or
33 director, or those serving a similiar function, of
34 the offeror or any affiliate or associate was con-
35 victed or entered a plea of guilty or nolo
36 contendere;

37 (10) A description of any tender offer made by the
38 offeror or any affiliate or associate in the past
39 5 years and of any acquisition of another business
40 made by the offeror or any affiliate or associate
41 in the past 5 years and any material change in the
42 organization or operation of that business; and

1 (11) Copies of such financial statements which the
2 administrator may require, not to exceed audited
3 balance sheets and income statements for each of
4 the 5 most recent fiscal years and, for any period
5 ending more than 90 days prior to the date of
6 filing the registration statement, an interim bal-
7 ance sheet and income statement covering the
8 period from the date of the last audited balance
9 sheet and income statement to a date within 90
10 days of filing the registration statement;

11 B. A detailed description of the source and amount of
12 funds or other consideration to be used in acquiring
13 the equity securities of the subject company, includ-
14 ing:

15 (1) A description of any securities which are
16 being offered in exchange for the equity securi-
17 ties of the subject company; and

18 (2) If any part of the funds or consideration will
19 be represented by borrowed funds or consideration,
20 a description of the transaction and the parties
21 thereto;

22 C. A statement of the purpose of the take-over offer,
23 including a description of any plan or proposal the
24 offeror has to liquidate, merge or consolidate the sub-
25 ject company; to sell or transfer any material portion
26 of its assets; to make any material change in its busi-
27 ness or its structure, including its directors, execu-
28 tive officers or other personnel;

29 D. A description of any interest of the offeror or any
30 affiliate or associate in the equity securities of the
31 subject company, including:

32 (1) The number of equity securities of which the
33 offeror or any associate or affiliate is the
34 record or beneficial owner, or has the right to
35 acquire directly or indirectly, the dates of ac-
36 quisition and the consideration paid; and

37 (2) Any contracts, arrangements or understandings
38 with any person with respect to any equity securi-
39 ties of the subject company including transfer of
40 any such securities, joint venture, loan or option
41 arrangements, puts or calls, guarantees of losses,
42 guarantee against loss or guarantees of profits,

1 division of losses or profits, the giving or with-
2 holding of proxies, voting arrangements or employ-
3 ment arrangements, identifying the persons with
4 whom such contracts, arrangements or
5 understandings have been entered into, and the
6 details thereof;

7 E. A description of any contracts, arrangements,
8 understandings or negotiations with any person who is
9 an officer, director, administrator, manager, executive
10 employee or record or beneficial owner of equity
11 securities of the subject company with respect to the
12 tender of any equity securities of the subject company,
13 the purchase by the offeror of any equity securities
14 owned by that person otherwise than pursuant to the
15 take-over offer, the retention of any person in his
16 present position or in any other management position or
17 with respect to that person giving or withholding a
18 favorable recommendation to the take-over offer, or the
19 election or designation of any person as a director, or
20 any similar function, of the subject company;

21 F. A description of the provisions made or to be made
22 for communicating the take-over offer to offerees,
23 including:

24 (1) The identity of all persons employed, retained
25 or compensated by the offeror or by any other
26 person on its behalf to make solicitations of or
27 recommendations to offerees regarding the
28 take-over offer and a description of the material
29 terms of that employment, retainer or arrange-
30 ments; and

31 (2) Copies of all written materials to be used in
32 soliciting offerees; and

33 G. Any other information, data, documents or exhibits
34 which the administrator may require to be filed.

35 3. Changes in registration statement; when required.
36 If any material change occurs in the information contained
37 in the registration statement, the offeror shall file
38 promptly with the administrator and deliver to the subject
39 company an amendment to the registration statement describ-
40 ing that change.

41 4. Omissions from registration statements; when permit-
42 ted. The administrator may permit the omission of any

1 information required to be included in the registration
2 statement if he determines that the information is immate-
3 rial or otherwise unnecessary for the protection of
4 offerees.

5 5. Alternatives to registration statement. In connec-
6 tion with any take-over offer which is subject to the
7 Securities Exchange Act of 1934, Section 14(d) of, 15 United
8 States Code, §78n(d), the administrator may permit an offeror
9 to file any statement required to be filed with the Securi-
10 ties and Exchange Commission with such additions or modifi-
11 cations as the administrator may require consistent with
12 section 1222, in lieu of the registration statement pre-
13 scribed in subsection 2.

14 §1226. Orders of public hearing

15 Within 15 days of the filing of a registration state-
16 ment pursuant to section 1225 or 1228, the administrator may
17 by order schedule a public hearing concerning any take-over
18 offer for the purpose of determining compliance with the re-
19 quirements of this Act, and whether the offeror has provided
20 full, fair and effective disclosure of all material facts
21 necessary for the making of an informed decision about the
22 take-over offer, including the filing of a complete and ac-
23 curate registration statement. Any initial hearing shall
24 commence within 25 days of the filing of a registration
25 statement.

26 §1227. Prohibition of purchase or payment

27 1. Prohibition orders. The administrator may in his
28 discretion issue an order prohibiting an offeror from pur-
29 chasing or paying for any equity securities tendered in
30 response to its take-over offer. The order may be issued at
31 any time prior to the purchase of or payment for the ten-
32 dered securities, but in no event after 60 days after the
33 filing of the registration statement.

34 2. Expiration of prohibition orders. Any order issued
35 by the administrator pursuant to subsection 1 prohibiting an
36 offeror from purchasing or paying for any equity securities
37 tendered in response to its take-over offer shall automati-
38 cally expire unless, within 30 days of the completion of a
39 hearing or investigation held pursuant to section 1226 or
40 section 1232, subsection 2, or 60 days after the filing of
41 the registration statement, whichever is sooner, the admin-
42 istrator shall have determined that there has not been com-
43 pliance with the requirements of this Act, and shall have

1 issued an order containing his findings of fact and conclu-
2 sions of law prohibiting the purchase and payment for any
3 equity securities tendered in response to the take-over
4 offer or conditioning any such purchase and payment upon
5 changes or modifications in the registration statement.

6 §1228. Requirements for certain take-over offers

7 The following provisions shall also apply to take-over
8 offers that are not subject to the Securities Exchange Act
9 of 1934, section 14(d), 15 United States Code, §78n(d).

10 1. Registration statement required. No person may make
11 a take-over offer unless as soon as practicable on the date
12 of commencement of the take-over offer, a registration
13 statement containing the information in section 1225, sub-
14 section 2 has been filed with the administrator, delivered
15 to the subject company, and sent, published or given to
16 offerees in a form and manner as may be required by rule or
17 regulation of the administrator.

18 2. Changes in registration statement; notice. If any
19 material change occurs in the information contained in the
20 registration statement, the offeror shall file promptly with
21 the administrator an amendment to the registration statement
22 describing the change and send, publish or give that infor-
23 mation to offerees and the subject company in a form and
24 manner as may be required by rule or regulation of the
25 administrator.

26 3. Substantial uniformity of offers. The take-over
27 offer shall be made to all offerees of the same class or
28 series equity securities on substantially the same terms.

29 4. Time period for deposit of equity securities. The
30 period of time within which equity securities may be depos-
31 ited pursuant to a take-over offer shall not be less than 20
32 business days.

33 5. Time period for withdrawal of deposited equity
34 securities. Equity securities deposited pursuant to a
35 take-over offer may be withdrawn by an offeree by demand in
36 writing to the offeror or the depository at any time within
37 15 business days after the date of the first invitation to
38 deposit those securities and at any time after 60 days after
39 the date of the first invitation to deposit the securities
40 if the shares have not been purchased or paid for, and
41 within 10 business days following the date of commencement
42 of another offeror's take-over offer for the same equity
43 securities.

1 6. Pro rata treatment of deposited equity securities.
2 Where a take-over offer is made for less than all the out-
3 standing equity securities of a class and where a greater
4 number of the securities is deposited pursuant thereto than
5 the offeror is bound or willing to take up and pay for, the
6 equity securities taken up by the offeror shall be taken up
7 as nearly as possible on a pro rata basis, disregarding
8 fractions, according to the number of equity securities
9 deposited by each offeree.

10 7. Change in terms of take-over offer; equal treatment
11 of offerees. Where an offeror varies the terms of a
12 take-over offer before its expiration date by increasing the
13 consideration offered to offerees, the offeror shall pay the
14 increased consideration for all equity securities accepted,
15 whether the securities have been accepted by the offeror
16 before or after the variation in the terms of the offer.

17 8. Rules governing certain acquisitions of equity
18 securities. The administrator may, by rule or regulation,
19 prohibit an offeror from purchasing equity securities of the
20 subject company other than by the take-over offer during the
21 course of that take-over offer.

22 §1229. Civil liabilities

23 1. Violations; liability to offeree; others. An offeror
24 who makes a take-over that does not comply in all material
25 respects with section 1225 or section 1228; or who makes a
26 take-over offer by means of an untrue statement of a mate-
27 rial fact or any omission to state a material fact necessary
28 in order to make the statement made, in the light of the
29 circumstances under which it was made, not misleading, the
30 offeree not knowing of that untruth or omission, and who
31 shall not sustain the burden of proof that he did not know
32 of the untruth or omission, and in the exercise of reason-
33 able care could not have known of the untruth or omission;
34 or any person, including a subject company, who violates
35 this Act shall be liable to any offeree whose equity securi-
36 ties are sold to the offeror pursuant to the take-over offer
37 or shall be liable to any other person, including an
38 offeror, damaged by the violation.

39 2. Civil action. The offeree or other person may sue
40 either at law or in equity and shall be entitled:

41 A. To recover the equity securities, together with all
42 dividends, interest or other payments received thereon
43 upon the tender of the consideration received for the
44 securities from the offeror;

1 B. If the offeror no longer owns the equity securities,
2 to recover such damages as the offeree shall have sus-
3 tained as the proximate result of the conduct of the
4 offeror which is in violation of this Act; or

5 C. To recover any damages sustained as the proximate
6 result of the conduct of any other person in violation
7 of this Act.

8 3. Statute of limitations. No civil action may be main-
9 tained under this section unless commenced before the
10 expiration of 2 years after the act or transaction consti-
11 tuting the violation.

12 4. Attorneys' fees; costs. A person who successfully
13 brings an action under this section shall be entitled to
14 recover reasonable costs and attorney fees.

15 5. Remedies not exclusive. The rights and remedies of
16 this Act are in addition to any other rights or remedies
17 that may exist at law or equity.

18 §1230. Injunctions and civil penalty

19 1. Injunctive action by administrator; others. Whenever
20 it appears to the administrator that any person has engaged
21 or is about to engage in any act or practice constituting a
22 violation of this Act, the administrator may in the adminis-
23 trator's discretion bring an action in any court of compe-
24 tent jurisdiction to enjoin that act or practice, to enforce
25 compliance with this Act, and to impose a civil penalty not
26 to exceed \$100,000, or the administrator may refer such evi-
27 dence as is available concerning violations of this Act to
28 the Attorney General, who may, with or without such a refer-
29 ence, bring such an action. A subject company, an offeror
30 or an offeree shall also have standing to bring an action in
31 any court of competent jurisdiction to enjoin any person
32 from any act or practice which constitutes a violation of
33 this Act.

34 2. Permissible action by court. Upon a proper showing,
35 the court may:

36 A. Grant a permanent or temporary injunction or
37 restraining order;

38 B. Order rescission of any sales or purchases of equity
39 securities determined to be unlawful under this Act;

1 C. Impose a civil penalty not to exceed \$100,000; and

2 D. Award such other relief as it may deem just and
3 proper, including directing the subject company to
4 refuse to transfer the securities on its books and to
5 refuse to recognize any vote with respect to the
6 securities.

7 §1231. Fraudulent, deceptive or manipulative acts

8 It shall be unlawful for any person to make any untrue
9 statement of a material fact or omit to state any material
10 fact necessary in order to make the statement made, in the
11 light of the circumstances under which it was made, not mis-
12 leading, or to engage in any fraudulent, deceptive or manip-
13 ulative acts or practices, in connection with any take-over
14 offer, or any solicitation of offerees in opposition to or
15 in favor of any such offer. For the purposes of this
16 section, the administrator may, by rules and regulations,
17 define and prescribe means reasonable designed to prevent
18 such acts and practices as are fraudulent, deceptive or
19 manipulative.

20 §1232. Fees, rules, regulations, forms, orders and
21 investigations

22 1. Rules. This Act shall be administered by the admin-
23 istrator who may promulgate rules, regulations, forms and
24 orders necessary to carry out the purposes and provisions of
25 this Act and who may set and charge such fees as the admin-
26 istrator shall deem reasonable and proper, considering the
27 additional expense to the administrator by the filing of a
28 registration statement by an offeror, but no such filing fee
29 may exceed \$3,000.

30 2. Investigations. In administering this Act, the
31 administrator may conduct any investigation which the admin-
32 istrator deems appropriate, consistent with section 1222.
33 In connection with any such investigation, the administrator
34 may require persons to file statements in writing and under
35 oath with the administrator's office; require and receive
36 such data and information as the administrator may deem
37 relevant; and subpoena witnesses, compel their attendance,
38 examine them under oath and require the production of book,
39 records or papers.

40 §1233. Violations; penalties

1 Every person who intentionally or knowingly violates
2 this Act, or any order, rule or regulation issued pursuant
3 thereto, is guilty of a Class C crime.

4 STATEMENT OF FACT

5 The purpose of this bill is to provide protection for
6 offerees and to the public by requiring that an offeror make
7 full, fair and effective disclosure of all material facts
8 necessary for the making of an informed decision about a
9 take-over offer and to provide substantive rights of with-
10 drawal and proration to offerees where those rights are not
11 accorded to them under federal law.

12 4551010282