

# MAINE STATE LEGISLATURE

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(New Draft of S.P. 840, L.D. 1963)  
(EMERGENCY)  
SECOND REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 2103**

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S. P. 957 In Senate, March 25, 1982  
Reported by Senator Sutton of Oxford from the Committee on  
Business Legislation and printed under Joint Rules No. 2.  
MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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

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**AN ACT to Revise the State Takeover  
Bid Law.**

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

Whereas, the Maine Takeover Bid Disclosure Law provides essential protection for corporations closely tied to Maine, their shareholders, and the public from the use of takeover bids without full and fair disclosure of information concerning them; and

Whereas, recent court decisions have called into question the constitutionality of similar laws of other states, thus leaving the continued validity of Maine's law, as currently in effect, uncertain; and

Whereas, experience under the Maine Takeover Bid Disclosure Law has also shown that there are important ambiguities

1 ties in the current law and important gaps in coverage of  
2 the current law; and

3 Whereas, in the judgment of the Legislature, these  
4 facts create an emergency within the meaning of the Consti-  
5 tution of Maine and require the following legislation as  
6 immediately necessary for the preservation of the public  
7 peace, health and safety; now, therefore,

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

9 Sec. 1. 13 MRSA §801, 2nd ¶, 2nd sentence, as enacted  
10 by PL 1977, c. 669, is amended to read:

11 The Legislature further finds and declares that persons  
12 making tender offers and purchase programs for the control  
13 securities of target companies under this chapter should be  
14 required to disclose fully and accurately the terms of the  
15 offers, and that it is a matter of urgent state interest to  
16 provide adequate time for the dissemination and considera-  
17 tion of the information.

18 Sec. 2. 13 MRSA §802, sub-§11-A is enacted to read:

19 11-A. Purchase program. "Purchase program" means an  
20 offer of cash or securities, or both, made by an offeror  
21 directly or through an agent by advertisement or any other  
22 written or oral communication to offerees to acquire, or the  
23 acquisition or the purchase in open market or in privately  
24 negotiated transactions, or both, of shares of any class of  
25 the outstanding equity securities of a target company with  
26 the purpose or effect of acquiring, directly or indirectly,  
27 beneficial ownership of a number of shares of any class of  
28 equity securities of the target company that:

29 A. Together with the offeror's presently owned shares  
30 of that class, will in the aggregate exceed 5% of the  
31 outstanding shares of the class; or

32 B. Together with an offeror's presently owned shares  
33 of all classes of equity securities of the target com-  
34 pany, will in the aggregate, after giving effect to all  
35 conversion and purchase rights held and to be acquired  
36 by the offeror, exceed 5% of the number of shares of  
37 stock or a similar security of the target company which  
38 will be outstanding.

39 The term "purchase program" does not include:

1 A. Any offer to acquire or any acquisition or purchase  
2 of any equity security of a target company either:

3 (1) Directly from the target company; or

4 (2) By any institutional investor, acting as  
5 such, whose activities are regulated by state or  
6 federal law, which may include a bank, savings  
7 institution, trust company, insurance company,  
8 investment company regulated and not exempt under  
9 the Federal Investment Company Act of 1940, as  
10 amended, trustee of a governmental or church  
11 retirement plan or of a trust qualified under the  
12 United States Internal Revenue Code of 1954,  
13 Section 401 (a) or 501 (c), as amended, or chari-  
14 table foundation or charitable trust whose income  
15 is exempt from federal taxation;

16 B. An offer made by an issuer to purchase its own  
17 shares or shares of a subsidiary;

18 C. An offer to purchase shares of a class not regis-  
19 tered pursuant to the United States Securities Exchange  
20 Act of 1934, Section 12, as amended;

21 D. An offer, if the acquisition by the offeror, in the  
22 instant transactions and in all acquisitions of equity  
23 securities of the same class during the preceding 12  
24 months, does not exceed 2% of that class of outstanding  
25 equity securities of the target company; or

26 E. An offer to purchase shares of a company whose  
27 assets do not exceed \$5,000,000.

28 **Sec. 3. 13 MRSA §802, sub-§13-A is enacted to read:**

29 13-A. Subsidiary. A 'subsidiary' of a specified  
30 person is a corporation or other issuer of securities, 50%  
31 or more of whose outstanding shares entitled in the ordinary  
32 course to vote for the election of directors, or similar  
33 controlling person, are owned directly or indirectly by the  
34 person specified.

35 **Sec. 4. 13 MRSA §802, sub-§14, as enacted by PL 1977,**  
36 **c. 669, is repealed and the following enacted in its place:**

37 14. Substantial portion of total assets. "Substantial  
38 portion of total assets" of a person means \$5,000,000 or  
39 more in assets, including assets of its affiliates, but not  
40 including affiliates incorporated in a foreign country, pro-  
41 vided those assets:

1 A. Constitute 20% or more of the total assets of the  
2 person and its affiliates, but not including affiliates  
3 incorporated in a foreign country; or

4 B. Generate 20% or more of the total sales or oper-  
5 ating revenues of the person and its affiliates, but  
6 not including affiliates incorporated in a foreign  
7 country.

8 For purposes of this subsection, a person is not an  
9 "affiliate" of a specified person if the specified  
10 person owns 50% or less of the shares of the person.

11 For the purposes of this chapter, in determining the  
12 location of assets, tangible real or personal property  
13 is deemed to be located in this State if it is physi-  
14 cally located, as of the date of the latest audited  
15 financial statement of the person, within the territo-  
16 rial jurisdiction of the State as defined by Title 1,  
17 sections 1 to 6. Intangible property is deemed located  
18 as follows.

19 (1) Cash shall be located in this State if depos-  
20 ited at the date of the latest audited financial  
21 statement of the person with a financial institu-  
22 tion or a financial institution authorized to do  
23 business in this State, as defined in Title 9-B,  
24 section 131.

25 (2) Securities are deemed located in the state of  
26 incorporation of their issuer.

27 (3) Accounts receivable are deemed located in the  
28 place in which the product which was sold to cre-  
29 ate the account receivable was manufactured or  
30 harvested. The place in which the product was  
31 "manufactured" means the place where the last  
32 value, excluding packaging, was added to the  
33 product sold:

34 (4) All other intangibles are deemed located in  
35 the state of incorporation of the person or, if  
36 not a corporation, of the legal domicile of the  
37 person.

38 **Sec. 5. 13 MRSA §802, sub-§16, as enacted by PL 1977,**  
39 **c. 669, is repealed and the following enacted in its place:**

40 16. Takeover bid or takeover offer. A "takeover bid  
41 or takeover offer" means a tender offer or a purchase pro-

1 gram. Takeover offer and takeover bid shall be wholly syn-  
2 onymous and interchangeable terms.

3 **Sec. 6. 13 MRSA §802, sub-§17, first sentence, as**  
4 **enacted by PL 1977, c. 669, is amended to read:**

5 "Target company" is any corporation or other issuer of  
6 securities which is either organized under or pursuant to  
7 the laws of the State or which has a substantial portion of  
8 its total assets in this State, or which employs 1,000 or  
9 more persons in this State and which maintains for its  
10 employees any one of the following benefit plans, if the  
11 plan makes acquisition of shares or a beneficial interest in  
12 shares of the corporation or other issuer of securities more  
13 advantageous to the employees than open market purchase of  
14 such shares: A qualified or nonqualified stock option plan;  
15 a stock bonus plan; an Employee Stock Ownership Plan (ESOP);  
16 a Tax Reduction Act Stock Ownership Plan (TRASOP); a savings  
17 and investment plan; or any other employee benefit plan or  
18 program under which employees are granted the opportunity to  
19 acquire shares or a beneficial interest in shares of the  
20 corporation, or other issuer of securities.

21 **Sec. 7. 13 MRSA §802, sub-§18 is enacted to read:**

22 18. Tender offer. A "tender offer:"

23 A. Is an offer of cash or securities, or both, made by  
24 an offeror directly or through an agent by advertise-  
25 ment or any other written or oral communication to  
26 offerees to purchase the number of shares of any class  
27 of equity securities of the target company that:

28 (1) Together with the offeror's presently owned  
29 shares of that class, will in the aggregate exceed  
30 5% of the outstanding shares of the class; or

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

39 B. Does not include, with respect to any class of  
40 equity securities of a target company:

1           (1) An isolated offer to purchase shares from not  
2 more than 10 individual shareholders during any  
3 period of 12 consecutive months, not made to  
4 shareholders generally;

5           (2) An offer made by an issuer to purchase its  
6 own shares or shares of a subsidiary;

7           (3) An offer to purchase shares of a class not  
8 registered pursuant to the United States Securi-  
9 ties Exchange Act of 1934, Section 12, as amended;

10           (4) An offer, if the acquisition by the offeror,  
11 in the instant transactions and in all acquisi-  
12 tions of equity securities of the same class  
13 during the preceding 12 months, does not exceed 2%  
14 of that class of outstanding equity securities of  
15 the target company; or

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

18           **Sec. 8. 13 MRSA §803, sub-§1, first sentence, as**  
19 **enacted by PL 1977, c. 669, is amended to read:**

20           No offeror shall may make a takeover bid unless, at least 20  
21 12 days before the takeover bid is made, the offeror has  
22 filed with the superintendent and has sent by certified mail  
23 to the target company at its principal office a disclosure  
24 statement containing the information required by this  
25 section and the takeover bid has been permitted to proceed  
26 by order of the superintendent in the manner hereinafter  
27 prescribed in this chapter, provided that a tender offer  
28 made in full compliance with the United States Securities  
29 Exchange Act of 1934, Section 14, as amended, United States  
30 Code, Title 15, Section 78n, and the regulations promulgated  
31 thereunder, may commence on the date of the filing required  
32 hereby but no shares may be purchased or accepted for pay-  
33 ment pursuant to a tender offer until the superintendent has  
34 completed any hearing held pursuant to section 804, or has  
35 determined not to hold such a hearing, and has issued an  
36 order permitting purchases to be made pursuant to section  
37 804.

38           **Sec. 9. 13 MRSA §803, sub-§2, ¶¶ K and L , as enacted**  
39 **by PL 1977, c. 669, are repealed and the following enacted**  
40 **in their place:**

41           K. The other contractual terms of the offer;

1 L. Complete and specific information concerning the  
2 matters set forth in section 804, subsection 1, para-  
3 graph B, subparagraph (1) to (4); and

4 **Sec. 10. 13, MRSA §803, sub-§2, ¶1M is enacted to read:**

5 M. All the information required under the provisions  
6 of the United States Securities Exchange Act of 1934,  
7 as amended, and the applicable rules and regulations  
8 promulgated thereunder with respect to tender offers,  
9 prior to making a tender offer, to be:

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

13 (2) Filed with the Securities and Exchange Com-  
14 mission, under the provisions of the United States  
15 Securities Exchange Act of 1934, as amended, and  
16 the applicable rules and regulations promulgated  
17 thereunder with respect to tender offers.

18 **Sec. 11. 13 MRSA §804, sub-§1, as enacted by PL 1977,**  
19 **c. 669, is repealed and the following is enacted in its**  
20 **place:**

21 1. Takeover bid. The superintendent shall by order  
22 permit any purchase program referred to in section 803, sub-  
23 section 1, to proceed and permit purchases to be made pur-  
24 suant to a tender offer referred to in the proviso thereto,  
25 unless, after a public hearing thereon referred to in sub-  
26 section 2, he finds that:

27 A. The terms of the takeover bid do not comply with  
28 this chapter; or

29 B. There has not been full and fair disclosure, in all  
30 material respects, of the information required to be  
31 included in the disclosure statement filed pursuant to  
32 section 803, specifically including, without limita-  
33 tion, complete information sufficient to allow offerees  
34 to determine whether:

35 (1) The financial condition of the offeror is  
36 such as to jeopardize the interests of any secur-  
37 ity holders of the target company;

38 (2) The terms of the takeover bid are unfair or  
39 inequitable to the security holders of the target  
40 company;



1           (3) The plans and proposals which the offeror  
2           has, to make any material change in the target  
3           company's business or corporate or other organiza-  
4           tional structure or management, are not in the  
5           interest of the security holders of the target  
6           company; and

7           (4) The competence, experience and integrity of  
8           those persons who would control the operation of  
9           the target company are such that it would not be  
10           in the interest of the security holders of the  
11           target company to accept the takeover bid.

12           **Sec. 12. 13 MRSA §804, sub-§2, first and 3rd sen-**  
13           **tences, as enacted by PL 1977, c. 669, are amended to read:**

14           A public hearing shall be held at a time and place fixed by  
15           the superintendent if, within ~~20~~ 10 days after the filing of  
16           the statement referred to in section 803, subsection 1, he  
17           shall determine that such a public hearing is necessary and  
18           if, within 20 days after the filing of the statement, he  
19           shall ~~schedule a date for~~ commence such public hearing.

20           At least ~~10~~ 7 days' notice of the holding of any public  
21           hearing shall be given by the superintendent to the offeror  
22           filing the statement and to the target company.

23           **Sec. 13. 13 MRSA §808, sub-§1, as enacted by PL 1977,**  
24           **c. 669, is amended to read:**

25           1. Solicitation for acceptance or rejec-  
26           tion. Solicitation of any offeree for acceptance of rejec-  
27           tion of a takeover offer, or acquisition of any equity  
28           security of a target company, pursuant to a takeover offer  
29           which has not been permitted to proceed or which is not ex-  
30           empt under this chapter;

31           **Sec. 14. 13 MRSA §808, sub-§4, as enacted by PL 1977,**  
32           **c. 669, is amended to read:**

33           4. Acquisition. Acquisition by ~~the~~ a tender offeror,  
34           after announcement of the takeover tender offer and prior to  
35           its termination, of equity securities of the target company  
36           otherwise than pursuant to the takeover tender offer.

37           **Sec. 15. 13 MRSA §809, as enacted by PL 1977, c. 669,**  
38           **is amended to read:**

39           §809. Limitations on tender offers

1           1. Offer, withdrawal. An A tender offer shall provide  
2 that any equity securities of a target company deposited or  
3 tendered pursuant to a ~~takeover~~ tender offer may be with-  
4 drawn by or on behalf of any offeree at any time up to the  
5 3rd day prior to the announced termination date, except as  
6 the superintendent may otherwise prescribe by rule or order  
7 for the protection of the offerees. An A tender offer shall  
8 remain open for a minimum time period of 20 days.

9           2. Limited offers. If ~~an~~ a tender offeror makes a  
10 ~~takeover~~ tender offer for less than all the outstanding  
11 equity securities of any class, and if the number of securi-  
12 ties deposited or tendered pursuant thereto is greater than  
13 the number the offeror has offered to accept and pay for,  
14 the securities shall be accepted pro rata, disregarding  
15 fractions, according to the number of securities deposited  
16 or tendered by each offeree.

17           3. Tender offeror; terms varied. If ~~an~~ a tender  
18 offeror varies the terms of a ~~takeover~~ tender offer before  
19 its expiration date by increasing the consideration offered  
20 to the offerees, the offeror shall pay the increased consid-  
21 eration for all equity securities accepted, whether the  
22 securities have been accepted by the offeror before or after  
23 the variation in the terms of the offer.

24           ~~4. Injunctive proceeding.~~ No offeror shall make or  
25 continue a takeover offer at any time when an administrative  
26 or injunctive proceeding has been brought by the superinten-  
27 dent against the offeror for violation of this chapter that  
28 has not been finally determined.

29           5. Target company. An A tender offeror may not make a  
30 ~~takeover~~ tender offer involving a target company which is  
31 not made to all the owners of equity securities of the  
32 target company.

33           **Sec. 16. 13 MRSA §811, sub-§2, as enacted by PL 1977,**  
34 **c. 669, is amended by adding after the 2nd sentence a new**  
35 **sentence to read:**

36 The superintendent may utilize these fees to retain persons  
37 to assist him in the administration of this chapter.

38           **Sec. 17. 13 MRSA §812, sub-§1, first sentence, as**  
39 **amended by PL 1979, c. 127, §90 is further amended to read:**

40 Whenever it appears to the superintendent that any person  
41 has engaged in or is about to engage in any act or practice  
42 constituting a violation of this chapter or any regulation

1 or order adopted under this chapter, the superintendent may  
2 investigate and issue orders and notices without hearing,  
3 notwithstanding the Maine Administrative Procedure Act,  
4 Title 5, chapter 375, including cease and desist orders and  
5 notices.

6       Sec. 18. 13 MRSA §812, sub-§1, as amended by PL 1979,  
7 c. 127, §90, is further amended by adding after the first  
8 sentence a new sentence to read:

9 Any such cease and desist order shall expire within 30 days  
10 unless a hearing has been scheduled pursuant to section 804,  
11 in which case the cease and desist order shall be termi-  
12 nated, modified or continued by the superintendent's final  
13 determination after hearing.

14       Sec. 19. 13 MRSA §812, sub-§3 is enacted to read:

15       3. Takeover bid delayed. No offeror may make or con-  
16 tinue a takeover offer at any time when an administrative or  
17 injunctive proceeding has been brought by the superintendent  
18 against the offeror for violation of this chapter that has  
19 not been finally determined.

20       Sec. 20. 13 MRSA §817, sub-§2, as enacted by PL 1977,  
21 c. 669, is amended by adding at the end a new sentence to  
22 read:

23 Subsequent to a filing made pursuant to section 803, the  
24 superintendent may refrain from taking any further action  
25 under this chapter if he finds that the law of another  
26 state applies to the takeover bid, that such law is being  
27 applied to the takeover bid, and that such law provides pro-  
28 tection to shareholders equal to or greater than provided by  
29 this chapter.

30       Sec. 21. 13 MRSA §817, sub-§3, as enacted by PL 1977,  
31 c. 669, is amended to read:

32       3. Vote; exception. This chapter shall not apply to  
33 any offer involving a class vote by shareholders of the  
34 target company, pursuant to its articles of incorporation or  
35 the applicable corporation statute, on a merger, consolida-  
36 tion or sale of corporate assets in consideration of the  
37 issuance of securities of another corporation, or sale of  
38 its securities in exchange for cash or securities of another  
39 corporation.

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

1 STATEMENT OF FACT

2 At least 35 states now have so-called "state takeover  
3 bid laws" designed to regulate tender offers or takeover  
4 bids. These laws generally require certain disclosures to  
5 be made and set certain time limitations and conditions for  
6 a "tender offeror" to meet in connection with making an  
7 offer seeking ownership of significant percentages of any  
8 class of equity security of a corporation. Maine's law is  
9 one of the best.

10 Recently, these laws have come under attack as being  
11 unconstitutional in certain aspects because of conflicting  
12 or inconsistent federal regulation of the same subject mat-  
13 ter. As a result, many states are now making adjustments to  
14 their laws to meet some of the constitutional challenges  
15 while maintaining state control.

16 This new draft makes needed changes in the Maine  
17 Takeover Bid Disclosure Law and updates our law to cover ad-  
18 ditional programs of similar intent.

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