

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No. 2039

H.P. 1445 House of Representatives, February 20, 1986

Submitted by the Department of Business, Occupational and Professional Regulation pursuant to Joint Rule 24.

Reference to the Committee on Business and Commerce suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsored by Representative Stevens of Bangor, Senator Bustin of Kennebec and Representative Telow of Lewiston.

STATE OF MAINE

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

**AN ACT to Repeal the Maine Takeover Bid
Disclosure Law.**

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

13 MRSA c. 23, as amended, is repealed.

STATEMENT OF FACT

The United States Supreme Court and other federal and state courts have invalidated various takeover bid disclosure laws. The Maine Takeover Bid Disclosure Law is similar to many of the invalidated laws and there is great doubt that the Maine law would survive constitutional challenge.

There have been at least 3 lawsuits involving this law within the last 4 years. These arose when

1 well represented, out-of-state firms made tender of-
2 fers for shares in corporations chartered in Maine.
3 In each case, Maine had little interest in the target
4 corporation since the company did not have employees,
5 assets or any significant number of shareholders in
6 this State. Yet in each instance, the State had to
7 expend substantial resources to participate in the
8 litigation.

9 Each of these cases terminated in stipulations in
10 which the State agreed not to enforce the Maine
11 Takeover Bid Disclosure Law and the plaintiffs, the
12 would-be offerors, agreed to waive their rights to
13 attorneys' fees. Had any of these cases proceeded to
14 a decision, it is likely that the Maine Takeover Bid
15 Disclosure Law would have been invalidated. It is
16 also a distinct possibility that, under United States
17 Code 42 Section 1988, the State would have had to
18 pay the attorneys' fees incurred by the plaintiffs.
19 These fees could have been substantial in amount.

20 There is no certain way to amend the Maine
21 Takeover Bid Disclosure Law to avoid the constitu-
22 tional problem. If the scope of the law were nar-
23 rowed sufficiently to mitigate its burden on inter-
24 state commerce, such as by requiring a substantial
25 percentage of Maine shareholders and by limiting the
26 territorial effect to this State, the law would cease
27 to serve any meaningful purpose. Repealing rather
28 than amending is the more sensible course of action.

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