

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

Legislative Document

No. 2396

S.P. 946

In Senate, March 2, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN  
Secretary of the Senate

Presented by President PRAY of Penobscot.

Cosponsored by Representative CLARK of Millinocket and Representative MICHAUD of East Millinocket.

### STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

**An Act to Define Severance Pay Liability in Business Combinations.**

(EMERGENCY)  
(AFTER DEADLINE)



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

4  
Whereas, the effect of past governmental actions shaping the  
6 market for corporate control has been to protect certain  
interests of shareholders, including speculators and arbitrageurs  
8 operating in public stock exchanges; to protect the continuity of  
corporate managements; and to protect the integrity of corporate  
10 assets within the State; and

12  
Whereas, the result of this protection has been to impose on  
combining corporations effective costs associated with neglecting  
14 the interests of stockholders, disrupting the continuity of  
corporate managements and dissolving the integrity of corporate  
16 assets within the State; and

18  
Whereas, no comparable protection has been created through  
past governmental actions that imposes similar effective costs  
20 associated with the layoff or termination of all or part of an  
existing work force employed by a combining corporation, with the  
22 elimination of local employment opportunities or with the  
disruption of economic stability in communities within the State  
24 in which certain assets of combining corporations may be located;  
and

26  
Whereas, the economic effect of previous governmental  
28 actions has been to create a distortion in the market for  
corporate control, by imposing effective costs on some market  
30 factors while leaving local work forces and community economies  
without effective cost; and

32  
Whereas, the economic distortion thus created in the market  
34 for corporate control is analogous to the economic distortion  
that previously resulted in the cost-free use of the State's  
36 environmental assets for the disposal of industrial byproducts,  
emissions and wastes prior to the imposition of pollution  
38 penalties in the creation of state and national environmental  
protection laws; and

40  
Whereas, the State has a legitimate interest in the  
42 corporation, its employees, the community and economic stability,  
in a balanced institutional structure under which corporations  
44 are chartered to exist or licensed to do business in the State,  
and in an equitable set of rules fair to all corporate  
46 constituencies affected by business combinations; and

48  
Whereas, governments have a special obligation to correct  
errors, inconsistencies, distortions and unintended effects of  
50 past actions; and

2           Whereas, the size and economic scale of individual  
4 transactions in the market for corporate control have reached  
6 unprecedented levels; the value of individual and of all  
8 transactions is increasing and now involves hundreds of billions  
10 of dollars and thousands of people at investment banks,  
12 commercial banks and law firms; and the lines between so-called  
14 corporate raiders engaged in hostile takeovers and other takeover  
16 bidders have become blurred, as major corporations and investment  
18 bankers have become major participants; and

20           Whereas, the successful imposition of an effective cost on  
22 previously neglected factors in the market for corporate control  
24 must reflect an economic scale appropriate to the market; and

26           Whereas, 2 major employers and purchasers of goods and  
28 services in northern and eastern Maine are presently engaged in a  
30 business combination characterized by multi-billion dollar  
32 values; and

34           Whereas, the costs associated with either the success or  
36 failure of this business combination will be sufficiently  
38 substantial as to place such cost-free factors in the market for  
40 corporate control as local work forces and community economic  
42 stability at risk of bearing an unbalanced burden in any cost  
44 adjustments that follow the conclusion of the business  
46 combination effort; and

48           Whereas, in the judgment of the Legislature, these facts  
50 create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

**Sec. 1. 26 MRSA §625-B, sub-§1, ¶¶I, J and K are enacted to read:**

I. "Business combination," when used in reference to any domestic corporation and any interested stockholder of that domestic corporation, means:

(1) Any merger or consolidation of that domestic corporation or any subsidiary of that domestic corporation with that interested stockholder, any other corporation, whether or not it is an interested stockholder of that domestic corporation, which is, or after a merger or consolidation would be, an affiliate or associate of that interested stockholder, or any other corporation if the merger or consolidation is caused by that interested stockholder and as a result

2 of that merger or consolidation this section is not  
3 applicable to the surviving corporation; or

4 (2) Any sale, lease, exchange, mortgage, pledge,  
5 transfer or other disposition, in one transaction or a  
6 series of transactions, of assets of that domestic  
7 corporation or any subsidiary of that domestic  
8 corporation having an aggregate market value equal to  
9 10% or more of the aggregate market value, or book  
10 value determined in accordance with good accounting  
11 practices, of all the assets, determined on a  
12 consolidated basis, of that domestic corporation,  
13 having an aggregate market value equal to 10% or more  
14 of the aggregate market value of all the outstanding  
15 stock of that domestic corporation, or representing 10%  
16 or more of the earning power or income, determined on a  
17 consolidated basis, of that domestic corporation  
18 proposed by, on behalf of or pursuant to any agreement,  
19 arrangement or understanding, whether or not in  
20 writing, with that interested stockholder or any  
21 affiliate or associate of that interested stockholder.

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

- 26 (1) An insurer subject to the provisions of Title 24-A;
- 27 (2) A financial institution subject to Title 9-B; or
- 28 (3) A public utility subject to regulation by the  
29 Public Utilities Commission.

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

41 **Sec. 2. 26 MRS §625-B, sub-§2-A is enacted to read:**

42 **2-A. Multiple damages triggered in business combinations.**  
43 **Notwithstanding subsection 2, any employer engaged in any**  
44 **business combination, whether successful or unsuccessful and**

2 whether as an offeror or as a target company with respect to such  
4 a business combination, who relocates or terminates a covered  
6 establishment or who reduces the work force at a covered  
8 establishment through layoffs or terminations, is liable to the  
10 laid off or terminated employees for severance pay of one full  
12 year's gross wages. The severance pay to eligible employees is  
14 in addition to any final wage payment to the employee and must be  
16 paid within one quarter after the employee's last full day of  
18 work, notwithstanding any other provisions of law. This  
20 liability is in effect for a period of 5 years following an  
22 interested stockholder's stock acquisition date, date of tender  
24 offer or date of official notification to the United States  
26 Securities and Exchange Commission of an intent to execute a  
28 business combination, whichever occurs first.

16 Sec. 3. 26 MRSA §625-B, sub-§3, ¶B, as enacted by PL 1979, c.  
18 663, §157, is amended to read:

18 B. The employee is covered by an express contract providing  
20 for severance pay, except there may be no mitigation of  
22 liability for multiple damages in the case of business  
24 combinations as set out in subsection 2-A;

24 **Emergency clause.** In view of the emergency cited in the  
26 preamble, this Act takes effect when approved.

28 **STATEMENT OF FACT**

30 For the reasons set out in the emergency preamble, this bill  
32 provides that any employer engaged in a business combination who  
34 relocates or terminates the business or reduces the work force  
through layoffs or termination is liable for one full year's  
gross wages for each employee laid off or terminated.