

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1136

H.P. 839

House of Representatives, March 4, 2003

An Act To Amend the Maine Business Corporation Act

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative EDER of Portland.
Cosponsored by Representatives: CANAVAN of Waterville, CRAVEN of Lewiston,
DUDLEY of Portland, PINGREE of North Haven, TWOMEY of Biddeford, WALCOTT of
Lewiston.

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

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Sec. 1. 13-C MRSA §106 is enacted to read:

§106. Safeguard public interest; damages

1. Sue for damages. A person may sue a corporation or a director of a corporation for damages suffered if in the operation of the corporation the corporation adversely affects the public interest. As used in this section, "public interest" means the environment, human rights, public health and safety of the community in which the corporation operates and the dignity of the corporation's employees.

Suit may be brought at law or in equity in a court of competent jurisdiction against the corporation or a director of the corporation at the time the damage occurred or at the time the board of directors of the corporation approved the action that caused the damage.

2. Exemption. Notwithstanding any other provision of this chapter, a director of a corporation is not liable for damages pursuant to subsection 1 if the director can prove that:

A. The damage complained of was the direct result of an action that was approved by the corporation's board of directors but that the director had voted against; or

B. The damage complained of was the direct result of an action approved by the corporation prior to the director's becoming a member of the board.

This subsection does not apply to a corporation or a director of a corporation if the consolidated annual revenues of that corporation are less than \$15,000,000.

3. Damages; amount; punitive. The court may award damages against the corporation or director of the corporation for a violation of the public interest if the plaintiff has established clear and convincing evidence that the corporation or director knowingly, intentionally or recklessly caused damage to the public interest or injury to the plaintiff.

A plaintiff in a court of law who successfully sues a corporation or director of a corporation pursuant to subsection 1 may recover damages in one of the following amounts, whichever is greater:

A. The actual damage caused to the plaintiff; or

2 B. Three times the savings realized by the corporation as a
result of the corporation's or a director's failure to
4 protect the public interest pursuant to subsection 1.

6 4. Contribution. A director of a corporation against whom
a suit has been brought pursuant to subsection 1 and who is found
8 liable is entitled to contributions from every other director of
that corporation who could be held liable under subsection 3 or
10 any other director who, if sued separately, would have been
liable to make the same payment.

12 5. Statute of limitations. An action pursuant to
14 subsection 1 must begin within 2 years after the discovery of the
damage caused. An action pursuant to subsection 1 must begin
16 within 6 years after the time the damage occurred. An action may
not be brought to enforce any liability under subsection 1 that
18 accrues prior to January 1, 2017.

20 6. Controlling person; liability. A person who, through
stock ownership, agency or otherwise, or who, under an agreement
22 with one or more other persons through stock ownership, agency or
otherwise, controls a person liable under subsection 1 is also
24 jointly and severally liable to the same extent as the controlled
person, unless the controlling person had no knowledge of or
26 reasonable grounds to believe in the existence of the facts by
reason of which the controlled person is liable.

28 For purposes of this subsection, the term "control," including
30 the terms "controls," "controlled" and "controlling," means the
possession, direct or indirect, of the power to direct or cause
32 the direction of the management and policies of a person, whether
through stock ownership, agency or otherwise.

34 7. Attorney general; bring action. Whenever it appears to
36 the Attorney General that a corporation or director of a
corporation is engaged or about to engage in an act or practice
38 that constitutes or will constitute a violation of the provisions
of subsection 1, the Attorney General may in the Attorney
40 General's discretion bring an action in an appropriate court to
enjoin such act or practice and, upon a proper showing, a
42 permanent or temporary injunction or restraining order may be
granted without bond.

44 Whenever it appears to the Attorney General that a corporation or
46 director of a corporation has violated the provisions of
subsection 1, the Attorney General may bring an action in court,
48 and the court has jurisdiction to impose, upon a proper showing,
a civil penalty on the corporation or director who committed the
50 violation. The penalty is payable to the State.

2 This subsection takes effect January 1, 2017.

4 8. Criminal penalties. A director of a corporation who
6 willfully violates subsection 1 shall upon conviction be fined
8 not more than \$1,000,000 or imprisoned not more than 5 years, or
 both. The fine may not reduce the amount of a civil penalty paid
 under subsection 7.

10 9. Attorney's fees. Upon motion, a court may award
12 attorney's fees to a successful party against one or more
14 defendants in any action pursuant to subsection 1 against a
 corporation or a director of a corporation if:

16 A. The action results in a significant benefit, whether
18 pecuniary or nonpecuniary, to the general public or a large
20 class of persons other than shareholders; and

B. The court determines that the fees should not in the
 interest of justice be paid out of recovery, if any.

22 Sec. 2. 13-C MRSA §831, sub-§1, ¶B, as enacted by PL 2001, c.
24 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the
 following enacted in its place:

26 B. In a manner that:

28 (1) The director reasonably believes to be in the best
30 interests of the corporation; or

32 (2) Does not adversely affect the public interest.
34 "Public interest" means the environment, human rights,
36 public health and safety of the community in which the
 corporation operates and the dignity of the
 corporation's employees.

38 Sec. 3. 13-C MRSA §843, sub-§1, ¶C, as enacted by PL 2001, c.
40 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the
 following enacted in its place:

42 C. In a manner that:

44 (1) The officer reasonably believes to be in the best
 interests of the corporation; or

46 (2) Does not adversely affect the public interest.
48 "Public interest" means the environment, human rights,
50 public health and safety of the community in which the
 corporation operates and the dignity of the
 corporation's employees.

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SUMMARY

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6 This bill amends the Maine Business Corporation Act by
including as part of the duties of directors the duty to operate
8 the corporation in a manner that fully respects the public
interest.

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The bill provides that, after January 1, 2017, actions may
be brought against not only the corporation, but individual
12 directors for activities of the corporation that adversely affect
the environment, human rights, public health and safety or
14 dignity of corporate employees.