

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1474

H.P. 1037

House of Representatives, March 24, 2005

**An Act To Require That Corporations Be Operated in a Manner
That Does Not Adversely Affect the Public Interest**

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 Senator STRIMLING of Cumberland and
Representative: TWOMEY of Biddeford.

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

4 **Sec. 1. 5 MRSA §4552**, as amended by PL 1993, c. 327, §1, is
further amended to read:

6 **§4552. Policy**

8 To protect the public health, safety and welfare, it is
declared to be the policy of this State to keep continually in
10 review all practices infringing on the basic human right to a
life with dignity, and the causes of these practices, so that
12 corrective measures may, where possible, be promptly recommended
and implemented, and to prevent discrimination in employment,
14 housing or access to public accommodations on account of race,
color, sex, physical or mental disability, religion, ancestry or
16 national origin; and in employment, discrimination on account of
age or because of the previous assertion of a claim or right
18 under former Title 39 or Title 39-A and in housing because of
familial status; and to prevent discrimination in the extension
20 of credit on account of age, race, color, sex, marital status,
religion, ancestry or national origin; and to prevent
22 discrimination in education on account of sex or physical or
mental disability; and to prevent damage to the public interest
24 by business corporations.

26 **Sec. 2. 5 MRSA c. 337, sub-c. 5-C** is enacted to read:

28 **SUBCHAPTER 5-C**

30 **RIGHT TO BE PROTECTED FROM CORPORATE**
32 **DAMAGE TO THE PUBLIC INTEREST**

34 **§4606. Damage to public interest; liability**

36 **1. Civil liability actions for damage caused to public**
interest. If a corporation formed under Title 13-C is alleged to
38 have caused damage to the public interest, any person injured by
such action may, either in law or in equity, sue either:

40 **A. The corporation; or**

42 **B. Any person who was a director of the corporation either**
at the time that:

44 **(1) The damage occurred; or**

46 **(2) The board of directors approved the corporate**
48 **action that led directly to such damage.**

2 For purposes of this section, "damage to the public interest"
3 means damage to the environment, violations of human rights,
4 adverse effects on the public health or safety, damage to the
5 welfare of the communities in which the corporation operates or
6 violations of the dignity of a corporation's employees.

7 This subsection provides the exclusive remedy for any failure by
8 a director or officer to carry out the requirements of Title
9 13-C, section 831, subsection 1 and Title 13-C, section 843,
10 subsection 1, paragraph C.

11 **2. Amount of damages.** Any suit brought under subsection 1
12 may be to recover damages in an amount that represents the
13 greater of:

14 A. The actual damage caused to the plaintiff; or

15 B. Three times the savings that accrued to the corporation
16 as the result of failing to carry out the requirements of
17 Title 13-C, section 831, subsection 1 and Title 13-C,
18 section 843, subsection 1, paragraph C.

19 **3. Punitive damages.** A trier of fact may award punitive
20 damages against a defendant in any suit brought under subsection
21 1 if the plaintiff establishes by clear and convincing evidence
22 that:

23 A. The defendant knowingly, intentionally or recklessly
24 caused damage to the public interest as defined in
25 subsection 1; and

26 B. An award is necessary to punish the defendant for the
27 conduct or to deter the defendant from similar conduct in
28 like circumstances.

29 **4. Conditions.** A lawsuit under subsection 1 may not be
30 brought:

31 A. To recover any damages that accrue prior to the date
32 that at least 25 additional states have enacted legislation
33 that provides that a director's duty to act in the best
34 interests of the corporation no longer comes at the expense
35 of the environment, human rights, public health or safety,
36 the welfare of the communities in which the corporation
37 operates or the dignity of its employees; and

38 B. Unless the consolidated annual revenues, calculated in
39 accordance with generally accepted accounting principles, of
40 the corporation that is alleged to have caused the damage
41 is at least \$100,000,000.

2 for the fiscal year immediately preceding the filing of the
3 complaint were more than \$15 million.

4 **5. Exemption.** A director is not liable under subsection 1
5 if that director sustains the burden of proof that:

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

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

12 **6. Contribution.** Any director against whom a claim is
13 asserted under subsection 1 and who is held liable thereon is
14 entitled to contributions from each of the other directors who
15 are likewise liable or any other director who, if sued
16 separately, would have been liable to make the same payment.

17 **7. Limitation of actions.** An action may not be maintained
18 to enforce any liability under subsection 1 unless the action is
19 brought by the later of:

20 A. Two years after the discovery of the damage caused; and

21 B. Six years after the cause of action against the
22 corporation accrued.

23 **8. Liability of controlling persons.** A person who, by or
24 through stock ownership, agency or otherwise, or who, pursuant to
25 or in connection with an agreement or understanding with one or
26 more other persons by or through stock ownership, agency or
27 otherwise, controls any person liable under subsection 1, is also
28 jointly and severally liable to the same extent as that
29 controlled person to any person to whom the controlled person is
30 liable, unless the controlling person had no knowledge of or
31 reasonable grounds to believe in the existence of the facts by
32 reason of which the liability of the controlled person is alleged
33 to exist. For purposes of this subsection, "control" means the
34 possession, direct or indirect, of the power to direct or cause
35 the direction of the management and policies of a person, whether
36 through the ownership of voting securities, by contract or
37 otherwise.

38 **9. Affirmative defense.** It is an affirmative defense to
39 any proceeding under this section that within 180 days after the
40 service of the summons and complaint upon the defendant
41 corporation, the defendant corporation remedied the allegations
42 contained in the complaint.

2 10. Attorney General. Whenever it appears to the Attorney
4 General that any corporation formed under this Title is engaged
6 or about to engage in any acts or practices that constitute or
8 will constitute damage to the public interest as defined by
10 subsection 1, the Attorney General may bring an action to enjoin
12 those acts or practices, and upon proper showing a permanent or
 temporary injunction or restraining order may be granted without
 bond. The Attorney General may bring an action in court and the
 court has jurisdiction to impose, upon a proper showing, a civil
 penalty on the person who committed the damage to the public
 interest. The penalty is payable to the State.

14 11. Injunctions. Persons or entities who allege that they
16 will be adversely affected by any acts or practices that cause or
18 will cause damage to the public interest as defined by subsection
20 1 may bring an action to enjoin those acts or practices, and upon
 proper showing a permanent or temporary injunction or restraining
 order may be granted by a court without bond.

22 12. Attorney's fees. Upon motion, a court may award
24 attorney's fees to a successful party against one or more
 defendants in any action brought pursuant to subsection 1 against
 a corporation, a director or both if the court determines that:

26 A. A significant benefit, whether pecuniary or
28 nonpecuniary, has been conferred on the general public or a
 large class of persons;

30 B. The necessity and financial burden of private
32 enforcement are such as to make the award appropriate; and

34 C. Such fees should not, in the interest of justice, be
 paid out of recovery, if any.

36 **Sec. 3. 13-C MRSA §831, sub-§1, ¶B,** as enacted by PL 2001, c.
38 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

40 B. In a manner that the director reasonably believes to be
42 in the best interests of the corporation, but not at the
44 expense of the environment, human rights, public health or
 safety, the welfare of the communities in which the
 corporation operates or the dignity of its employees.

46 **Sec. 4. 13-C MRSA §843, sub-§1, ¶C,** as enacted by PL 2001, c.
 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

48 C. In a manner the officer reasonably believes to be in the
50 best interests of the corporation, but not at the expense of
 the environment, human rights, public health or safety, the

2 welfare of the communities in which the corporation operates
3 or the dignity of its employees.

4
5 **SUMMARY**

6
7 This bill imposes a duty on directors and officers of a
8 corporation formed under the laws of the State to act in a manner
9 that is not injurious to the environment, human rights, public
10 health or safety, the welfare of the communities in which the
11 corporation operates or the dignity of the corporation's
12 employees.

13
14 Under this bill, if 25 other states enact similar
15 legislation and if the consolidated annual revenues of a
16 corporation exceed \$15,000,000, that corporation, its officers
17 and its directors may be held liable for damages resulting from
18 actions that cause damage to the public interest.