

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

April 28, 1982 to April 29, 1982

AND AT THE

FIFTH SPECIAL SESSION

May 13, 1982

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TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND AND THIRD SPECIAL SESSIONS

and

SECOND REGULAR SESSION

and

FOURTH AND FIFTH SPECIAL SESSIONS

of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 659

S.P. 957 - L.D. 2103

AN ACT to Revise the State Takeover
Bid Law.

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 in the current law and important gaps in coverage of the current law; and

Whereas, in the judgment of the Legislature, these facts 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. 13 MRSA §801, 2nd ¶, 2nd sentence, as enacted by PL 1977, c. 669, is amended to read:

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

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

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

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

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

The term "purchase program" does not include:

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

(1) Directly from the target company; or

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

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

C. An offer to purchase shares of a class not registered pursuant to the United States Securities Exchange Act of 1934, Section 12, as amended;

D. An offer, if the acquisition by the offeror, in the instant transactions and in all acquisitions of equity

securities of the same class during the preceding 12 months, does not exceed 2% of that class of outstanding equity securities of the target company; or

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

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

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

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

14. Substantial portion of total assets. "Substantial portion of total assets" of a person means \$5,000,000 or more in assets, including assets of its affiliates, but not including affiliates incorporated in a foreign country, provided those assets:

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

B. Generate 20% or more of the total sales or operating revenues of the person and its affiliates, but not including affiliates incorporated in a foreign country.

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

For the purposes of this chapter, in determining the location of assets, tangible real or personal property is deemed to be located in this State if it is physically located, as of the date of the latest audited financial statement of the person, within the territorial jurisdiction of the State as defined by Title 1, sections 1 to 6. Intangible property is deemed located as follows.

(1) Cash shall be located in this State if deposited at the date of the latest audited financial statement of the person with a financial institution or a financial institution authorized to do business in this State, as defined in Title 9-B,

section 131.

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

(3) Accounts receivable are deemed located in the place in which the product which was sold to create the account receivable was manufactured or harvested. The place in which the product was "manufactured" means the place where the last value, excluding packaging, was added to the product sold.

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

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

16. Takeover bid or takeover offer. A "takeover bid or takeover offer" means a tender offer or a purchase program. Takeover offer and takeover bid shall be wholly synonymous and interchangeable terms.

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

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

Sec. 7. 13 MRSA §802, sub-§17, ¶A, as enacted by PL 1977, c. 669, is amended to read:

A. An insurer subject to the provisions of Title 24-A; or

Sec. 8. 13 MRSA §802, sub-§17, ¶B, as enacted by PL 1977, c. 669, is repealed.

Sec. 9. 13 MRSA §802, sub-§18 is enacted to read:

18. Tender offer. A "tender offer:"

A. Is an offer of cash or securities, or both, made by an offeror directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares of any class of equity securities of the target company that:

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

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

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

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

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

(3) An offer to purchase shares of a class not registered pursuant to the United States Securities Exchange Act of 1934, Section 12, as amended;

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

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

Sec. 10. 13 MRSA §803, sub-§1, first sentence, as

enacted by PL 1977, c. 669, is amended to read:

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

Sec. 11. 13 MRSA §803, sub-§2, ¶¶ K and L, as enacted by PL 1977, c. 669, are repealed and the following enacted in their place:

K. The other contractual terms of the offer;

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

Sec. 12. 13 MRSA §803, sub-§2, ¶M is enacted to read:

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

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

(2) Filed with the Securities and Exchange Commission, under the provisions of the United States Securities Exchange Act of 1934, as amended, and the applicable rules and regulations promulgated thereunder with respect to tender offers.

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

1. Takeover bid. The superintendent shall by order permit any purchase program referred to in section 803, subsection 1, to proceed and permit purchases to be made pursuant to a tender offer referred to in the proviso thereto, unless, after a public hearing thereon referred to in subsection 2, he finds that:

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

B. There has not been full and fair disclosure, in all material respects, of the information required to be included in the disclosure statement filed pursuant to section 803, specifically including, without limitation, complete information sufficient to allow offerees to determine whether:

(1) The financial condition of the offeror is such as to jeopardize the interests of any security holders of the target company;

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

(3) The plans and proposals which the offeror has, to make any material change in the target company's business or corporate or other organizational structure or management, are not in the interest of the security holders of the target company; and

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

Sec. 14. 13 MRSA §804, sub-§2, first and 3rd sentences, as enacted by PL 1977, c. 669, are amended to read:

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

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

Sec. 15. 13 MRSA §808, sub-§1, as enacted by PL 1977, c. 669, is amended to read:

1. Solicitation for acceptance or rejection. Solicitation of any offeree for acceptance or rejection of a takeover offer, or acquisition of any equity security of a target company, pursuant to a takeover offer which has not been permitted to proceed or which is not exempt under this chapter;

Sec. 16. 13 MRSA §808, sub-§4, as enacted by PL 1977, c. 669, is amended to read:

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

Sec. 17. 13 MRSA §809, as enacted by PL 1977, c. 669, is amended to read:

§809. Limitations on tender offers

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

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

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

4. Injunctive proceeding. No offeror shall make or continue a takeover offer at any time when an administrative or injunctive proceeding has been brought by the superinten-

dent against the offeror for violation of this chapter that has not been finally determined.

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

Sec. 18. 13 MRSA §811, sub-§2, as enacted by PL 1977, c. 669, is amended by adding after the 2nd sentence a new sentence to read:

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

Sec. 19. 13 MRSA §812, sub-§1, first sentence, as amended by PL 1979, c. 127, §90, is further amended to read:

Whenever it appears to the superintendent that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter or any regulation or order adopted under this chapter, the superintendent may investigate and issue orders and notices without hearing, notwithstanding the Maine Administrative Procedure Act, Title 5, chapter 375, including cease and desist orders and notices.

Sec. 20. 13 MRSA §812, sub-§1, as amended by PL 1979, c. 127, §90, is further amended by adding after the first sentence a new sentence to read:

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

Sec. 21. 13 MRSA §812, sub-§3 is enacted to read:

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

Sec. 22. 13 MRSA §817, sub-§1, as enacted by PL 1977, c. 669, is amended to read:

1. Exception. If the target company is a public utility, or public utility holding company, national banking association, bank holding company, savings and loan association or savings and loan holding company subject to regula-

tion by a federal agency and the takeover of the company is subject to approval by that agency, this chapter shall not apply.

Sec. 23. 13 MRSA §817, sub-§2, as enacted by PL 1977, c. 669, is amended by adding at the end a new sentence to read:

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

Sec. 24. 13 MRSA §817, sub-§3, as enacted by PL 1977, c. 669, is amended to read:

3. Vote; exception. This chapter shall not apply to any offer involving a ~~class~~ vote by shareholders of the target company, pursuant to its articles of incorporation or the applicable corporation statute, on a merger, consolidation or sale of corporate assets in consideration of the issuance of securities of another corporation, or sale of its securities in exchange for cash or securities of another corporation.

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

Effective April 9, 1982.

CHAPTER 660

H.P. 1956 - L.D. 1929

AN ACT to Encourage Fuel Diversity by Increased Use of Natural Gas.

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

Whereas, permit applications are pending right now