

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985
Chapters 384-End

AND AT THE

FIRST SPECIAL SESSION

November 13, 1985

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1985

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

an unlawful purpose, he may demand, in writing, all the records in the possession of such public utility relating to such service. Upon a showing of cause to any Justice of the Supreme Judicial Court or the Superior Court or Judge of the District Court, said the justice or judge shall approve said the demand. Such showing shall be by the affidavit of any law enforcement officer. Upon receipt of such demand, approved by such justice or judge, such public utility shall forthwith deliver to the Attorney General person making the request all the records or information in compliance with said the demand. If the person making request demands that the public utility not release the fact of the request or that records will be or have been supplied, the public utility shall not, without court order release such fact or facts. No such public utility or employee thereof shall may be criminally or civilly responsible for furnishing any records or information in compliance with said the demand.

Effective September 19, 1985.

CHAPTER 394

H.P. 678 - L.D. 965

AN ACT to Protect Shareholders in Maine Corporations.

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

Sec. 1. 13-A MRSA §603, sub-§4, ¶D, as enacted by PL 1971, c. 439, §1, is repealed and the following enacted in its place:

D. The holders of not less than such percentage of the shares entitled to vote at the meeting as may be set forth in the articles of incorporation or bylaws, provided that if, after September 1, 1985, a corporation shall adopt a provision in its articles of incorporation or bylaws which establishes such percentage to be in excess of 10%, then, upon application of the holders of not less than 10% of the shares entitled to vote at a meeting, the Superior Court, in an action in which the court may proceed after giving notice to the corporation, for good cause shown, may order a special meeting of the shareholders of the

corporation to be called and held at a time and place, upon the notice and for the transaction of the business, as may be designated in the order; or

Sec. 2. 13-A MRSA §716, as enacted by PL 1971, c. 439, §1, is amended by adding after the first paragraph a new paragraph to read:

In discharging their duties, the directors and officers may, in considering the best interests of the corporation and of its shareholders, consider the effects of any action upon employees, suppliers and customers of the corporation, communities in which offices or other establishments of the corporation are located and all other pertinent factors.

Sec. 3. 13-A MRSA §910 is enacted to read:

§910. Right of shareholders to receive payment for shares following a control transaction

1. Shareholders entitled to rights; exceptions. Any holder of the voting shares of a corporation that becomes the subject of a control transaction described in subsection 2 shall be entitled to the rights and remedies provided in this section, unless:

A. The bylaws, by amendment adopted within 90 days of the effective date of this Act and not subsequently rescinded by an amendment of the articles of incorporation, provide that this section shall not be applicable to the corporation; or

B. The articles of incorporation provide that this section shall not be applicable to the corporation.

2. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. A "controlling person" means:

(1) A person who has, or a group of persons acting in concert that has, voting power over voting shares of the corporation that would entitle the holders of those shares to cast at least 25% of the votes that all shareholders would be entitled to cast in an election of the directors of the corporation; or

(2) A person who has, or a group of persons acting in concert that has, voting power over at least 25% of the shares in any class of shares entitled to elect all the directors, or any specified number of them.

A "person" includes any individual, firm, corporation or other entity.

B. Notwithstanding paragraph A, a person or group of persons which would otherwise be a controlling person within the meaning of this section shall not be deemed a controlling person unless, subsequent to the effective date of this section, that person or group increases the percentage of outstanding voting shares of the corporation over which it has voting power to a percentage in excess of the percentage of outstanding voting shares of the corporation over which that person or group had voting power on the effective date of this section, and to at least the amount specified in paragraph A.

C. For the purposes of this section:

(1) A person shall not be a controlling person under paragraph A if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in paragraph A or who are not deemed a controlling person under paragraph B; and

(2) A person has voting power over a voting share if that person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, voting trust, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of, that voting share.

D. A "control transaction" means the acquisition by a person or group of the status of a controlling person.

E. The "control transaction date" means the date on which a controlling person becomes a controlling person.

3. Notice of control transaction to be given to shareholders. Within 15 days of the control transaction date, notice that a control transaction has occurred shall be given by the controlling person to each shareholder of record of the corporation holding voting shares. If the controlling person so requests, the corporation shall, at the option of the corporation and at the expense of the controlling person, either furnish a list of all such shareholders to the person or group or mail the notice to all such shareholders. There shall be included in, or enclosed with, the notice a copy of this section. Any list provided by the corporation to a controlling person pursuant to this subsection shall be used only for the purpose of giving the notice required by this subsection.

4. Shareholder demand for payment. After the control transaction date, any holder of voting shares of the corporation may, prior to or within 30 days after the notice required by subsection 3 is given, which time period shall be specified in the notice, make written demand on the controlling person for payment of the amount provided in subsection 5 with respect to the voting shares of the corporation held by the shareholder, and the controlling person shall pay that amount to the shareholder. The demand of the shareholder shall state the number and class or series, if any, of the shares owned by him with respect to which the demand is made.

5. Shareholder entitled to receive payment for shares. A shareholder making written demand under subsection 4 shall be entitled to receive cash for each of his shares in an amount equal to the fair value of each voting share as of the day prior to the control transaction date, taking into account all relevant factors, including an increment representing a proportion of any value payable for acquisition of control of the corporation.

6. Submission of certificates; notation. At the time of filing his demand for payment for his shares pursuant to subsection 4, or within 20 days thereafter, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation or its transfer agent for notation thereon that such demand has been made; such certificates shall promptly be returned after entry thereon of such notation. A shareholder's failure to do so shall, at the option of the controlling person, terminate his rights under this section, unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has

been so made shall be transferred, each new certificate issued for those shares shall bear a similar notation, together with the name of the original holder of the shares who made the written demand, and a transferee of the shares shall acquire by the transfer no rights in the corporation other than those which the original demanding shareholder had after making demand for payment of the fair value of the shares.

7. Written offer; balance sheet. Within 10 days after the expiration of the period provided in subsection 4 for making demand, the controlling person shall make a written offer to each demanding shareholder to pay for those shares at a specified price deemed by the controlling person to be the fair value of those shares. The offer shall be made at the same price per share to all demanding shareholders of the same class. The notice and offer shall be accompanied by a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the making of the offer, and a profit and loss statement of the corporation for the 12 months' period ended on the date of the balance sheet.

8. Agreement on fair value; payment. If, within 30 days after the expiration of the period provided in subsection 4 for making demand, the fair value of the shares is agreed upon between any demanding shareholder and the controlling person, payment for those shares shall be made within 90 days after the date on which the written offer required by subsection 7 was made, upon surrender of the certificate or certificates representing those shares. Upon payment of the agreed value, the demanding shareholder shall cease to have any interest in the shares.

9. Failure to reach agreement on fair value of shares. If, within the additional 30-day period prescribed by subsection 8, one or more demanding shareholders and the controlling person have failed to agree as to the fair value of shares:

A. The controlling person may, or shall, if it receives a demand as provided in subparagraph (1), bring an action in the Superior Court in the county in this State where the registered office of the corporation is located praying that the fair value of those shares be found and determined. This action:

(1) Shall be brought by the controlling person, if it receives a written demand for suit from any demanding shareholder, which demand is made within 60 days after the date

on which the written offer required by subsection 7 was made; and if it receives a demand for suit, the controlling person shall bring the action within 30 days after receipt of the written demand; or

(2) In the absence of a demand for suit, may at the election of the controlling person be brought by the controlling person at any time from the expiration of the additional 30-day period prescribed by subsection 8 until the expiration of 60 days after the date on which the written offer required by subsection 7 was made;

B. If the controlling person fails to institute the action within the period specified in paragraph A, any demanding shareholder may thereafter bring such an action in the name of the controlling person;

C. No such action may be brought, either by the controlling person or by a demanding shareholder, more than 6 months after the date on which the written offer required by subsection 7 was made;

D. In any such action, whether initiated by the controlling person or by a demanding shareholder, all demanding shareholders, wherever residing, except those who have agreed with the controlling person upon the price to pay for their shares, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the complaint shall be served on each demanding shareholder who is a resident of this State as in other civil actions, and shall be served by registered or certified mail, or by personal service without the State, on each demanding shareholder who is a nonresident. The jurisdiction of the court shall be plenary and exclusive;

E. The court shall determine whether each demanding shareholder, as to whom the controlling person requests the court to make such determination, has satisfied the requirements of this section and is entitled to receive payment for his shares; as to any demanding shareholder with respect to whom the controlling person makes such a request, the burden is on the shareholder to prove that he is entitled to receive payment. The court shall then proceed to fix the fair value of the shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall

have such power and authority as shall be specified in the order of their appointment or an amendment to the order of appointment;

F. All shareholders who are parties to the proceedings shall be entitled to judgment against the controlling person for the amount of the fair value of their shares, except for any shareholder whom the court shall have determined not to be entitled to receive payment for his shares. The judgment shall be payable only upon and concurrently with the surrender to the controlling person of the certificate or certificates representing those shares. Upon payment of the judgment, the demanding shareholder shall cease to have any interest in those shares;

G. The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the control transaction date to the date of payment. If the court finds that the refusal of any shareholder to accept the controlling person's offer of payment for his shares was arbitrary, vexatious or not in good faith, it may in its discretion refuse to allow interest to him;

H. The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the controlling person, but all or any part of those costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the demanding shareholders who are parties to the proceeding to whom the controlling person shall have made an offer to pay for the shares, if the court finds that the action of those shareholders in failing to accept that offer was arbitrary or vexatious or not in good faith. Those expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for any party and shall exclude the fees and expenses of experts employed by any party, unless the court otherwise orders for good cause. The court shall award each shareholder who is a party to the proceeding reasonable compensation for any expert or experts employed by the shareholder in the proceeding and the shareholder's reasonable attorney's fees and expenses, if:

(1) No offer was made;

(2) The fair value of the shares as determined materially exceeds the amount which

the controlling person offered to pay therefor; or

(3) The amount which the controlling person offered to pay, on a per share basis, is less than the highest price per share paid by the controlling person in the 2 years immediately preceding the date of the complaint; and

I. At all times during the pendency of any such proceeding, the court may make any and all orders which may be necessary to protect the corporation, the controlling person or the demanding shareholders, or which are otherwise just and equitable. Those orders may include, without limitation, orders:

(1) Requiring the controlling person to pay into court, or post security for, the amount of the judgment or its estimated amount, either before final judgment or pending appeal;

(2) Requiring the deposit with the court of certificates representing shares held by the demanding shareholders;

(3) Imposing a lien on the property of the controlling person to secure the payment of the judgment, which lien may be given priority over liens and incumbrances contracted by the controlling person after the control transaction date; and

(4) Staying the action pending the determination of any similar action pending in another court having jurisdiction.

10. Holding and disposal of shares acquired by payment. Shares acquired by a controlling person pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as provided in this section, may be held and disposed of as authorized and issued shares.

11. Minors. The demand required by subsection 4 may be made, in the case of a shareholder who is a minor or otherwise legally incapacitated, either by the shareholder, notwithstanding his legal incapacity, or by his guardian, or by any person acting for him as next friend. The shareholder shall be bound by the time limitations set forth in this section, notwithstanding his legal incapacity.

12. Appeals. Appeals shall lie from judgments in actions brought under this section as in other civil actions in which equitable relief is sought.

13. Compliance; shareholder rights. If a person or group of persons proposing to engage in a control transaction complies with the requirements of this section in connection with the control transaction, the effectiveness of the rights afforded in this section to shareholders may be conditioned upon the consummation of the control transaction.

The person or group of persons shall give prompt written notice of the satisfaction of any such condition to each shareholder who has made demand as provided in this section.

14. Application. This section does not apply to:

A. Any corporation that is the subject of a control transaction and that does not have a class of voting shares:

(1) Registered or traded on a national securities exchange; or

(2) Registered with the Securities and Exchange Commission pursuant to the Act of Congress known as the Securities Exchange Act of 1934, as the same has been or may hereafter be amended, United States Code Annotated, Title 15, Section 78a et seq.;

B. Any person or group that inadvertently becomes a controlling person if that controlling person divests itself of a sufficient amount of its voting shares so that it is no longer a controlling person, as soon as practicable, but in no event more than 30 days after that person or group receives notice from the corporation that it has become a controlling person, or to any corporation that is the subject of a control transaction and that on the effective date of this section was a subsidiary of any other corporation. For purposes of this paragraph, "subsidiary" shall mean any corporation as to which any other corporation has acquired or has the right to acquire, directly or indirectly, through the exercise of warrants, options and rights and the conversion of all convertible securities, whether issued or granted by the subsidiary or otherwise, voting power over voting shares of the subsidiary that would entitle the holders thereof to cast in

excess of 50% of the votes that all shareholders would be entitled to cast in the election of directors of that subsidiary; provided that a subsidiary will not be deemed to cease being a subsidiary so long as such corporation remains a controlling person within the meaning of subsection 2; or

C. Any person or group that becomes a controlling person solely as a result of the corporation's purchase or redemption of its own voting shares.

Effective September 19, 1985.

CHAPTER 395

S.P. 626 - L.D. 1640

AN ACT to Adopt the Uniform Conservation Easement Act.

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

Sec. 1. 33 MRSA §667, as enacted by PL 1969, c. 566, §1, is repealed.

Sec. 2. 33 MRSA §668, as amended by PL 1983, c. 458, §13, is repealed.

Sec. 3. 33 MRSA c. 7, sub-c. VIII-A is enacted to read:

SUBCHAPTER VIII-A

CONSERVATION EASEMENTS

§476. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Conservation easement. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; pro-