

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
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of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

as defined in this chapter is guilty of a Class B crime. This subsection shall not include devices manufactured under written contract for sale to common carriers and, law enforcement agencies and the Department of Corrections, provided that the production of any such device shall not have commenced prior to the signing of the contract by both parties.

Sec. 5. 15 MRSA §712, as amended by PL 1979, c. 701, §12, is repealed and the following enacted in its place:

§712. Exceptions

1. Switchboard operators, communication common carrier agent. It is not a violation of this chapter for an operator of a switchboard or an officer, employee or agent of any communication common carrier, as defined in this chapter, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, provided that the communication common carriers shall not utilize service for observing or random monitoring, except for mechanical or service quality control checks, nor shall any such officer, employee or agent use or disclose to another the contents as defined in this chapter of the communication so intercepted.

2. Investigative officers. It is not a violation of this chapter for an investigative officer, as defined in this chapter, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the administration of criminal justice, if:

A. Either the sender or receiver of that communication is a person committed to the custody of the Department of Corrections under a term of imprisonment which is being served in a correctional facility administered by the department;

B. Notice of the possibility of interception is posted in a place and in a way sufficient to make that person aware of the possibility of interception; and

C. Probable cause exists that a criminal offense related to the security of a correctional facility administered by the department has been, is in the process of being or is about to be committed by a party to the conversation.

(1) Prior to the interception, the grounds for that probable cause shall be documented in a sworn affidavit which shall be submitted to a Judge of the District Court or Justice of the Superior Court to determine if that probable cause exists.

(2) Prior authorization for the submission to the Judge or Justice must be given by the Commissioner of Corrections and the Attorney General.

This subsection shall not authorize any interference with the attorney-client privilege.

Effective August 4, 1988.

CHAPTER 681

H.P. 1900 — L.D. 2596

AN ACT to Enhance the Voting Rights of Minority Shareholders.

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

Whereas, the protection of shareholders of domestic corporations against coercion and unfair business dealings is vital to the State's interest; and

Whereas, regulation of the corporate governance of domestic corporations is an essential means to the protection and advancement of such vital state interests; and

Whereas, certain take-overs of publicly held corporations, including those financed largely through debt to be repaid by the sale of substantial assets of the acquired corporation or by the consummation of self-interested transactions with the acquiror on terms established by the acquiror, present a grave threat to the interests of shareholders of publicly held corporations; and

Whereas, in the context of publicly held Maine corporations, the current statutory and common law protections of shareholders of Maine corporations from such transactions involving or initiated by interested shareholders are inadequate to protect shareholders of Maine corporations; and

Whereas, the adoption of more rigorous shareholder voting requirements for certain fundamental corporate transactions involving or initiated by interested shareholders will further protect shareholders of publicly held Maine corporations; 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:

13-A MRSA §611-A is enacted to read:

§611-A. Required vote of shareholders in certain business combinations

1. Notwithstanding anything to the contrary in this Act, except subsection 2, no domestic corporation may

engage in any business combination for a period of 5 years following an interested stockholder's stock acquisition date unless that business combination is:

A. Approved by the board of directors of that domestic corporation prior to that interested stockholder's stock acquisition date; or

B. Approved, subsequent to that interested stockholder's stock acquisition date, by the board of directors of that domestic corporation and authorized by the affirmative vote, at a meeting called for that purpose, of at least a majority of the outstanding voting stock not beneficially owned by that interested stockholder or any affiliate or associate of that interested stockholder or by persons who are either directors or officers and also employees of that domestic corporation.

2. This section shall not apply to business combinations as provided in this subsection.

A. Unless the articles of incorporation of a domestic corporation provide otherwise, the provisions of this section shall not apply to any business combination of that domestic corporation if that domestic corporation did not have a class of voting stock registered or traded on a national securities exchange or registered with the United States Securities and Exchange Commission pursuant to the United States Code, Title 15, Section 78 (g) on that interested stockholder's stock acquisition date.

B. Unless the articles of incorporation of that domestic corporation provide otherwise, the provisions of this section shall not apply to any business combination involving a domestic corporation which has no interested stockholders other than an interested stockholder who was an interested stockholder immediately prior to the effective date of this section unless, subsequent to the effective date of this section, that interested stockholder increased its proportion of that domestic corporation's outstanding voting stock to a proportion in excess of the proportion of voting stock that interested stockholder held immediately prior to the effective date of this section.

C. The provisions of this section shall not apply to any business combination involving a domestic corporation which has no interested stockholders other than an interested stockholder of that domestic corporation which became an interested stockholder inadvertently if that interested stockholder:

(1) As soon as practicable, divests itself of a sufficient amount of the voting stock of that domestic corporation so that the interested stockholder no longer is the beneficial owner, directly or indirectly, of 25% or more of the outstanding voting stock of that domestic corporation; and

(2) Has not been at any time within the 5-year peri-

od preceding the announcement date with respect to that business combination, an interested stockholder of that domestic corporation but for that inadvertent acquisition.

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

A. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

B. "Announcement date," when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for that business combination.

C. "Associate," when used to indicate a relationship with any person means:

(1) Any corporation or organization of which that person is a director, officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of voting stock;

(2) Any trust or other estate in which that person has a substantial beneficial interest or to which that person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of that person, or any relative of that spouse, who has the same home as that person.

D. "Beneficial owner," when used with respect to any stock, means a person:

(1) That, individually or with or through any affiliate or associate, beneficially owns that stock, directly or indirectly;

(2) That, individually or with or through any affiliate or associate, has the right to acquire that stock, whether that right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided that a person is not deemed the beneficial owner of stock tendered pursuant to a tender or exchange offer made by that person or any of that person's affiliates or associates until that tendered stock is accepted for purchase or exchange; or the right to vote that stock pursuant to any agreement, arrangement or understanding, whether or not in writing; provided that a person is not deemed the beneficial owner of any stock under this subparagraph if the agreement, arrangement or understanding to vote that stock arises solely from a revocable proxy given in response to a proxy solicitation made

in accordance with the applicable rules and regulations under the Exchange Act, and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report; or

(3) That has any agreement, arrangement or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy as described in subparagraph (2), or disposing of that stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, that stock.

E. "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 of that merger or consolidation this section is not applicable to the surviving corporation;

(2) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, of assets of that domestic corporation or any subsidiary of that domestic corporation having an aggregate market value equal to 10% or more of the aggregate market value, or book value determined in accordance with good accounting practices, of all the assets, determined on a consolidated basis, of that domestic corporation, having an aggregate market value equal to 10% or more of the aggregate market value of all the outstanding stock of that domestic corporation, or representing 10% or more of the earning power or income, determined on a consolidated basis, of that domestic corporation proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested stockholder or any affiliate or associate of that interested stockholder;

(3) The issuance or transfer by that domestic corporation or any subsidiary of that domestic corporation, in one transaction or a series of transactions, of any stock of that domestic corporation or any subsidiary of that domestic corporation which has an aggregate market value equal to 5% or more of the aggregate market value of all the outstanding stock of that domestic corporation to that interested stockholder or any affiliate or associate of that interested stockholder, except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all stockholders of that domestic corporation;

(4) The adoption of any plan or proposal for the liquidation or dissolution of that domestic corporation proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested stockholder or any affiliate or associate of that interested stockholder;

(5) Any reclassification of securities, including, without limitation, any stock split, stock dividend or other distribution of stock in respect of stock, or any reverse stock split, or recapitalization of that domestic corporation, or any merger or consolidation of that domestic corporation, with any subsidiary of that domestic corporation, or any other transaction, whether or not with, or into, or otherwise involving that interested stockholder, proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested stockholder or any affiliate or associate of that interested stockholder, any of which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting stock or securities convertible into voting stock of that domestic corporation or any subsidiary of that domestic corporation which is directly or indirectly owned by that interested stockholder or any affiliate or associate of that interested stockholder, except as a result of immaterial changes due to fractional share adjustments; or

(6) Any receipt by that interested stockholder or any affiliate or associate of that interested stockholder of the benefit, directly or indirectly, except proportionately as a stockholder of the domestic corporation, of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through that domestic corporation.

F. "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person's beneficial ownership of 10% or more of the outstanding voting stock of a corporation shall create a presumption that that person has control of that corporation. Notwithstanding this paragraph, a person is not deemed to have control of a corporation if that person holds voting power, in good faith and not for the purpose of circumventing this paragraph, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of that corporation.

G. "Exchange Act" means the "United States Securities Exchange Act of 1934" as that Act has been or may be amended from time to time.

H. "Interested stockholder," when used in reference to any domestic corporation, means any person, other than that domestic corporation or any subsidiary of that domestic corporation, that:

(1) Is the beneficial owner, directly or indirectly, of 25% or more of the outstanding voting stock of that domestic corporation; or

(2) Is an affiliate or associate of that domestic corporation and at any time within the 5-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 25% or more of the outstanding voting stock of that domestic corporation. For the purpose of determining whether a person is an interested stockholder pursuant to this paragraph, the number of shares of voting stock of that domestic corporation deemed to be outstanding shall include shares deemed to be beneficially owned by the person through application of paragraph D, but shall not include any other unissued shares of voting stock of that domestic corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise; provided that the term "interested stockholder" does not include any person whose ownership of voting stock in excess of the 25% limitation set forth in this section is the result of action taken solely by the corporation and not caused directly or indirectly by that person, provided that that person is an interested stockholder if thereafter that person acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by that person.

I. "Market value," when used in reference to property of any domestic corporation, means:

(1) In the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of that stock on the composite tape for New York Stock Exchange listed stocks, or, if that stock is not quoted on that composite tape or, if that stock is not listed on that exchange, on the principal United States Securities Exchange registered under the Exchange Act on which that stock is listed, or, if that stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of that stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System, or any system then in use, or, if no such quotations are available, the fair market value on the date in question of a share of that stock as determined in good faith by the board of directors of that corporation; and

(2) In the case of property other than cash or stock, the fair market value of that property on the date in question as determined in good faith by the board of directors of that domestic corporation.

J. "Stock" means:

(1) Any stock or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate or any certificate of deposit for stock; and

(2) Any security convertible, with or without consideration, into stock or any warrant, call or other option or privilege of buying stock without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase stock.

K. "Stock acquisition date," with respect to any person and any domestic corporation, means the date that that person first becomes an interested stockholder of that domestic corporation.

L. "Subsidiary" of any domestic corporation means any other corporation of which voting stock having 50% or more of the votes entitled to be cast is owned, directly or indirectly, by that domestic corporation.

M. "Voting stock" means shares of stock of a corporation entitled to vote generally in the election of directors.

4. The requirements of this section shall be in addition to the requirements of applicable law, including this Act, and any additional requirements contained in the articles of incorporation or bylaws of a domestic corporation with respect to business combinations as defined in this section.

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

Effective April 6, 1988.

CHAPTER 682

S.P. 238 — L.D. 657

AN ACT Amending the Workers' Compensation Laws Exempting Design Professionals from General Civil Liability for Injuries on Construction Projects.

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

Sec. 1. 39 MRSA §2, sub-§1, ¶¶G and H, as enacted by PL 1979, c. 663, §240, are amended to read:

G. Municipal school committees; and

H. Union school committees; and

Sec. 2. 39 MRSA §2, sub-§1, ¶I is enacted to read:

I. Design professional.