

Testimony of Jake Lachance

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Before the Joint Standing Committee on Labor

Testimony In Opposition to LD 61 "An Act to Regulate Employer Surveillance to Protect Workers"

Senator Tipping, Rep. Roeder, and members of the Joint Standing Committee on Labor, my name is Jake Lachance, and I am a Government Relations Specialist for the Maine State Chamber of Commerce, which advocates for over 5,000 large and small businesses across the State of Maine. I am here to give testimony in In Opposition to LD 61 "An Act to Regulate Employer Surveillance to Protect Workers".

The first concern that we have with this bill as drafted is the fundamental principle is the distinction between the electronic devices owned by a particular company and those owned by the employee. The Chamber does not challenge the provisions outlined in sections 3 and 4, as personally owned devices should not be subject to surveillance by an employer. But where an employee is using devices that are owned by the employer, then the employer should have an absolute right to oversee the use of those devices. This is a very common practice in the pre- and post-Covid business world. The employer is ultimately responsible for the use, content, and maintenance of these devices, it is only right that the employer should have the sole discretion to monitor the use and content that is maintained on these devices, regardless of whether that device is used in the workplace or remotely.

These tools for surveillance play an important role in allegations of harassment, embezzlement, child pornography, and other illicit activities, resolve disputes between employees, and recover misplaced or stolen property. For example, if a headline could read "'X' employee found conducting illicit activities on company computer", the inevitable follow-up question would be "how did the employer let that happen?" That is one unintended consequence of the bill as written, as employer surveillance could have helped mitigate the issue far earlier in the process.

Admittedly, the only provision in the bill that stipulates what needs to be done by an employer in relation to company owned devices is in sections 2 and 5, where it refers to notification to employees. Those two sections imply that notification to an employee needs to happen both when an employee is hired and "before beginning the use of employer surveillance". The language in section 5 is not something the Chamber takes issue with, but the implication of telling an employee that employer surveillance has started right before an investigation into possible company policy violations or illicit actions could inhibit that investigation, which could involve serious computer crimes.

It is also a concern of the Chamber that there is a private right of action clause in the proposed bill language. We feel as though this should be a matter solely for the Department of Labor. I also raise the question of the necessity for this bill to include section 7, subjecting this proposed bill to routine technical rulemaking. The Chamber asks that this section be struck from the proposed bill language and all changes to this bill, if eventually signed into law, be made with the opportunity for public and legislative scrutiny.

For these reasons, the Maine State Chamber of Commerce opposes the bill as presented and would urge an Ought Not to Pass vote. I am happy to answer any questions at this time.