

**TESTIMONY OF
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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Health Coverage, Insurance and Financial
Services

Hearing Date: *April 10, 2025, Thursday at 2:00 P.M.*

LD 1300 – *“An Act to Strengthen Maine's Implied Warranty Laws”*

Senator Bailey, Representative Mathieson, and members of the Health Coverage, Insurance and Financial Services Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against LD 1300, *“An Act to Strengthen Maine's Implied Warranty Laws.”*

This bill would require the Office of the Attorney General to notify sellers “conducting business in the State primarily through Internet-based sales,” and who remit \$10,000 or more in sales tax, of the State’s implied warranty laws. This testimony is limited to the bill’s tax implications.

First, Maine Revenue Services (MRS) currently has no way of accurately determining which sellers conduct business in Maine “primarily through Internet-based sales”, and requiring such reporting to MRS would be burdensome for both businesses and MRS.

MRS uses business codes to identify retailers by industry – for example, a “Computer” business code would indicate the retailer sells computer software or hardware. Similarly, a retailer with a “Grocery” business code could include a supermarket, a variety store, or a delicatessen. These codes are self-assigned by

the taxpayer during registration, and a taxpayer could choose a business code more specific to their industry. For instance, a retailer who sells pet food and supplies into Maine via a website might choose “pet supplies” rather than a “mail order” business code, which may identify sellers who make their sales through mail order or over the Internet. There is no specific business code for persons that make more than 50% of their sales over the internet.

Second, it is possible that the bill is intended to capture out-of-state sellers instead of “sellers conducting business . . . primarily through Internet-based sales”; but as written, these sellers could include retailers located in Maine. Many retailers that are physically present in Maine also sell products online, potentially at a higher volume than their brick-and-mortar sales. If the bill is intended to require notice only for out-of-state sellers, it should be drafted carefully to avoid possible Constitutional issues that could arise if out-of-state businesses, and perhaps even more so if limited to out-of-state “internet sales” businesses, are burdened in a differential manner compared to in-state businesses and primarily “non-internet sales” businesses.

Third, the taxpayer confidentiality law under Title 36, § 191(1) makes it unlawful for any MRS employee to divulge or make known in any manner any taxpayer information, unless specifically listed as an exemption under § 191(2). It is unclear how the Attorney General would identify the sellers requiring notice without receiving that information from MRS, and MRS could not divulge the information unless § 191(2) is amended.

Additionally, the bill uses the Uniform Commercial Code-defined term “seller,” which means “a person who sells or contracts to sell goods.” Also, the sales tax remittance threshold in this bill would be more administrable if it used the term “retailer,” defined in the Sales and Use Tax Law under Title 36, § 1752(10).

It is also unclear the time period over which the \$10,000 threshold would apply. As written, it could be interpreted as an annual or lifetime threshold. Lastly, certain retailers sell mostly exempt or nontaxable items over the Internet and therefore remit less than \$10,000 in sales tax but still have gross sales that, if hypothetically taxed at 5.5%, would generate at least \$10,000 in sales tax (i.e., exempt sales above ~\$181,819). These retailers would include many wholesalers, and they would be excluded from the Attorney General's notice requirement.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee's questions.