



STATE OF MAINE
DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT

JANET T. MILLS
GOVERNOR

MICHAEL DUGUAY
COMMISSIONER

May 6, 2025

Senator Donna Bailey
Representative Kristi Mathieson
Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, ME 04333

Re: Testimony in Opposition to
LD 1761 – An Act to Prohibit Certain Indemnification Agreements

Dear Senator Bailey, Representative Mathieson and Members of the Committee on Health Coverage, Insurance and Financial Services,

I am writing on behalf of the administration to oppose LD 1761, *An Act to Prohibit Certain Indemnification Agreements*.

The bill, as written, poses a serious threat to commercial certainty and freedom of contract in Maine and risks outlawing a wide swath of standard and beneficial business practices – far beyond what is necessary or appropriate to protect public policy.

Indemnification agreements are widely used in Maine and across the country in construction, commercial leasing, subcontracting, municipal contracting, and other fields where one party may be exposed to liability arising from the conduct of another. These agreements are critical for risk allocation and help ensure that the party best positioned to prevent or insure against a risk bears the associated responsibility.

By invalidating any agreement that "purports to indemnify or hold harmless" a party from "any negligence, claim or liability arising out of an intentional act or omission," the bill would outlaw indemnity clauses even when they concern third-party claims and misconduct by the indemnifying party. That is a substantial and unjustified overreach.



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The phrasing of this bill is legally confusing and may result in confusing ambiguity to all parties. For instance, the phrase "negligence arising out of an intentional act" is contradictory – negligence and intentional torts are legally distinct. The concept of an “intentional omission” is vague and subjective, leading to factual disputes and increased litigation. And innocent, routine conduct can be "intentional" in the literal sense without implying misconduct, which means even unintentional harms could be caught in this prohibition. Such imprecision creates uncertainty in contract drafting, risk management, and litigation – harming Maine businesses, contractors, and insurers alike.

The bill appears to prohibit a scenario where, for example, a subcontractor agrees to indemnify a general contractor for liability arising out of the subcontractor’s own conduct – even if the general contractor had no fault at all. That is a common and well-accepted contractual arrangement in Maine and nationally. Courts can already void indemnity clauses for intentional wrongdoing or fraud. But to eliminate them entirely, even when narrowly tailored and mutually agreed upon, is unjustified.

The bill contains two narrow exceptions, one for insurance contracts and one for “additional insured” endorsements. These are inadequate and inconsistent. The bill exempts insurance policies but fails to consider self-insured entities, which rely on indemnification agreements outside the scope of traditional insurance. It also allows a party to be added as an “additional insured”, which can serve the same purpose as indemnification, but then prohibits direct indemnification. This inconsistency will force parties into convoluted insurance arrangements just to achieve outcomes that are otherwise reasonable and customary.

At its core, LD 1761 seeks to legislate away a longstanding and functional element of private contracting. Maine courts already refuse to enforce indemnification agreements for fraud or willful misconduct. Further restrictions should be left to judicial discretion, not blanket legislative prohibition.

Moreover, the bill squarely addresses private contracts and does not concern insurance regulation.



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This bill proposal attempts to solve a problem that does not exist in Maine law, while creating a host of new ones for business. Its vague language, broad prohibitions, and arbitrary exceptions will inject uncertainty into private contracting, undermine risk management practices, and impose unnecessary burdens on Maine's businesses and municipalities. The bill threatens well-established and lawful contractual mechanisms for managing liability exposure. For these reasons, I respectfully urge the Committee to vote Ought Not to Pass on LD 1761.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Maureen Terry'.

Maureen Terry

Legislative Liaison
Department of Economic and Community Development