Testimony in Opposition to LD 2162:
"An Act to Regulate and Prevent Children's Access to Artificial Intelligence Chatbots with Human-like Features and Social Artificial Intelligence Companions"

Senator Bailey, Representative Mathieson, and distinguished members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, my name is Montana Towers, and I serve as a policy analyst for Maine Policy Institute. Maine Policy is a free market think tank, a nonpartisan, nonprofit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to submit testimony in opposition to LD 2162, "An Act to Regulate and Prevent Children's Access to Artificial Intelligence Chatbots with Human-like Features and Social Artificial Intelligence Companions."

Bill Language Vagueness "Reasonable Person"

LD 2162 would make it so that a deployer must "ensure that any chatbot operated or distributed by the deployer does not make human-like features available to minors to use." Under the definitions of this bill, the statute determines that an AI system has "human-like features" if the AI displays "Behavior that would lead a reasonable person to believe that the artificial intelligence system is conveying that it has humanity, sentience, emotions or desires." The bill does not define what it means by a "reasonable person." This is especially problematic considering that how people interact with and interpret AI is dramatically different based on that person's age, tech literacy, and previous exposure to AI systems.

Such a vague standard leaves deployers unable to determine what the bill permits or prohibits because reasonable people could entirely disagree on if certain behavior would lead them to believe the AI system was conveying humanity, sentience, emotions or desires.

Bill Language Vagueness "reasonable age verification systems"

In order to prevent minors from accessing these systems, the bill requires deployers to "implement reasonable age verification systems to ensure that chatbots with human-like features are not accessible to minors." This runs into the same problem as above, where "reasonable" is not defined or made clear. Would a mere pop-up asking someone to confirm they were over 18 be enough? Or is "reasonable age verification" just code for ID based age-verification that would require users to submit government issued ID in order to access these AI systems? The bill should explicitly state what it expects of deployers implementing age verification systems.

Bill Language Vagueness Civil Penalty Amount

Under this bill, the Maine Attorney General may impose a civil penalty of not more than $2,500 per violation, and for each intentional violation not more than $7,500 per violation. The bill however is not exactly clear on what "per violation" means. If the $2,500 penalty applies only once per deployer, it is relatively minor; if it applies per user, or per instance of failed age verification (and enforcement is delayed), then total liability could rapidly escalate. These are three different standards, but the bill is unclear which applies: is a single violation once per user, once per unvalidated use, or once per deployer? The Legislature needs to clarify what "per violation" means.

Potential Legal Difficulties

The vagueness that is present in this bill could even lead to potential legal problems. The U.S. Supreme Court has repeatedly invalidated overly vague civil statutes with meaningful penalties. In *FCC v. Fox Television Stations* (2012), the Court held that vague rules violate due process when they fail to give adequate notice of prohibited conduct.

Deployers reading this bill may not know the legal standard the state intends to enforce. Because it is unclear what "human-like features" are, deployers won't know what a reasonable age verification system looks like, and they won't even know what civil penalty amount they are looking at for potentially violating these rules. Users may also be unable to understand what this bill prohibits deployers to do, meaning even the users this bill claims to protect will be completely unaware of what protections are afforded to them under what circumstances.

Data Risks

Although this bill does have safeguards that make it so that a deployer can only collect information that is relevant to a legitimate purpose (and is the minimum amount of information necessary to fulfill that legitimate purpose), the information they store still could prove dangerous. In order to prove the age of their user base, deployers may have to keep user IDs on file. Forcing AI deployers to create large databases of Maine citizens' IDs could prove a tempting target for hackers. Individual IDs contain significant information, including a person's full name, address, date of birth, etc. that could be used by hackers to commit identity theft and other crimes if hackers breach an AI deployer's database. This bill could force Mainers to hand over their IDs; IDs that companies would store in a database and potentially be at risk.

Giving Rule Making Power to the Attorney General

Finally, LD 2162 allows the Department of the Attorney General the ability to adopt rules necessary to implement this bill. Although the delegation of rulemaking authority from the Legislature to executive agencies is common, the typical process typically requires some intelligible principle leading the agency to be able to follow the Legislature's direction. This bill is shockingly lacking in providing such direction. Any language needed to implement this bill should be included in the bill itself.

For these reasons, Maine Policy Institute strongly urges this committee to vote "Ought Not to Pass" on LD 2162. Thank you for your time and consideration.