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Testimony of
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On behalf of the
Maine State Chamber of Commerce
Before the Joint Standing Committee on Labor and Housing
in opposition to
L.D. 1964, An Act Create the Maine Paid Family Medical Leave Benefits Program

May 25, 2023

Sen. Tipping, Rep. Roeder and members of the Joint Standing Committee on Labor and Housing, my name is Peter Gore, and I am a Government Affairs Consultant with Maine Street Solutions, and I am here on behalf of my client, the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses all across Maine, and in every employment sector of our economy, speaking to you today in opposition to **L.D. 1964,** *An Act Create the Maine Paid Family Medical Leave Benefits Program.*

Let me state at the outset that it is unfortunate that we find ourselves in this position. Because to be clear, the Maine State Chamber is supportive of the policy of implementing paid family medical leave. Many of our members provide such leave now. There are other avenues to achieve this goal, including following the lead of our closest New England neighbors New Hampshire and Vermont in establishing a voluntary STD insurance program. We would even be ready to assist the committee and legislature in finding a way to make the current statue in Title 26 a paid version. However, LD 1964 is not paid FMLA. It simply is not. It is instead a short-term disability insurance plan, financed by businesses and their workers through a mandated payroll tax that may be as high as $400 million, and would be the most progressive, and benefit-rich of its kind in New England, if not the entire country.

Furthermore, this proposal – one of the most impactful for the workplace in decades – is being considered with less than a month to go before adjournment, and mere days before the deadline for all bills to be voted out of committee. We certainly appreciate all of the work the Commission and the bill's sponsors undertook to develop their proposal but we would ask; after all this work and effort doesn't such an impactful bill deserve all the time and discussion between interested parties, necessary to develop the best possible, and workable law?

Maines FMLA law can be found in Title 26, Chapter 7, Subchapter 6-A. The definitions and requirements to be eligible for FMLA leave are very clear. And they do not match up with those found in LD 1964. Maine's current FMLA threshold for affected business are 15 or more. The definitions for reasons for leave and of "family" are clear and relatively easy to decode. An employee must work for an employer for at least 12 months before being eligible for leave, and if eligible, they are entitled to up to 5 weeks per year over two years.

I stated at the outset that LD 1964 was not paid FMLA, and it is not. It applies to all businesses, regardless of size, independent contractors, and sole props, seasonal and temporary workers. All of these new small business' have never had to deal with the administrative burden of FMLA. Most do not have HR staff to assist them with this mandate. Most will be unable to find replacement workers for those who take this leave. These

same small employers will have to pay/maintain any/all benefits they currently provide to the employee out on leave (including Earned Paid Leave), while at the same time paying the exact same benefits for the replacement worker – doubling their costs in this area. While they are not subject to the payroll tax, they are burdened by the loss of a critical worker at a critical time. And yet there is nothing in this bill to assist them with this problem. What is in this bill for them is additional costs, and administrative burden. And an incentive to never grow beyond 15 employees.

Under the proposed bill, an employee need only have worked for the previous 4 quarters for some – not necessarily the – employer, before being eligible to take paid FMLA. The earnings requirement equates to roughly $6,000+ dollars. Eligible family members include "de facto" grandparents, grandchildren, siblings. None of this is found in current law. In addition, there is no definition of how a small business will know what constitutes a "de facto" family member. Complicating matters further, unlike existing Maine FMAL law, "affinity relationships" are authorized as "family members" under LD 1964. Affinity is defined in the bill as a "significant personal bond," or "like a Family relationship" – *but they are not family.* A small business will have no way to know who, or why an individual will be designated as an "affinity," but a business will need to decide how to fill in an absence when the employee is accessing leave for such a relationship under this bill. This all translates into a scenario where an employee may request up to 12-16 weeks of leave after having been employed in the workplace for 2-3 weeks.

Current law allows for up to 10 weeks over a two-year period. Under this bill, an employee could access 12-16 weeks of leave at 90% of wages up to a maximum of 120% of the states average weekly wage. This is the most generous benefits structure in New England, and one of the most generous in the nation. The national average is 66%, and most of our New England neighbors who have enacted mandatory paid FMLA have weekly benefits capped in the 60%+ range. Furthermore, it is my understanding that the average short term disability policy one could buy on the open market pays approximately 64-67% of wages. We would ask; if the reasoning behind enacting paid FMLA in Maine is because so many of our fellow New England States have done so, why shouldn't our program be more in line with theirs? The all have larger, more robust economies with average incomes above the national median. What's more, Maine employers are being *mandated* to pay for a larger share of the overall costs than in these New England states. All this serves to do in make us less competitive for jobs and opportunities for our citizens. Why would an employer locate here when the cost of doing businesses is much less south of us.

In addition to the progressive benefits structure, the length of leave authorized under the proposal could actually be far longer than 12-16 weeks. For discussion purposes, let us say an individual plans to take the full 16 weeks currently authorized under the bill. They toll their rights to the leave in early fall- September, with intent to go out on leave in October. They take the full 16 week into January. However, because the definition of 'application year" in the bill coincides with the calendar year, they are now eligible to again toll their rights under the act, since they are in a new year. Thus, an employee could extend their paid FMLA leave into the new year, for a total of *32 weeks- or more than 7 months.* And this would apply to seasonal workers, who, by the time they are ready to return to work, could find the seasonal employer had closed.

As I indicated at the beginning of my testimony, I think it is unfortunate we are here today opposing this bill. It did not have to be this way. Weeks ago, we made our concerns know to the sponsors, and provided them with a framework for a paid FMLA proposal that we could have worked on together. After that conversation, we heard nothing further. After being told for weeks the bill/amendment was forthcoming, we see legislation printed that could have been in the business communities and this committees hands months ago. Despite this, there is time to develop a proposal that costs less, but still provides people with paid FMLA benefits. We stand ready to work with the sponsors, the committee, the Governor and legislature to achieve a fair and workable paid FMAL program. We hope you will take us up on this offer. In the meantime, we must oppose LD 1964. There is a better way. Thank you.