

Good afternoon, Sen. Curry, Rep. Roberts and Members of the Joint Standing Committee on Innovation, Development, Economic Advancement and Business.

My name is Linda Caprara. I am the Vice President of Advocacy for the Maine State Chamber of Commerce and a resident of Winthrop. I am here today to testify in strong opposition to L.D. 1815, “An Act to Protect Maine’s Consumers by Establishing an Abuse of Dominance Right of Action and Requiring Notification of Mergers”.

This bill would essentially allow the State or anyone to bring a frivolous lawsuit and bring a private right of action against a person they feel is utilizing a strong market position that makes it challenging for competition. That market could be geographic in nature or could be by way of products they sell or produce. A person is presumed to be dominant if they have a 60% or more share of the relevant market as a seller and 50% as a buyer. Maine is a small state. Those conditions would not be hard to satisfy.

This bill would have huge impacts on businesses across the state and the economic consequences would be disastrous. What this bill does is essentially gut our antitrust laws here in Maine which protect the consumer and emphasize “free market”. While the US economy is based on the premise that market forces and competition self-regulate the economy with respect to pricing, demand, innovation and competition, it is the Federal Trade Commission and the Department of Justice who oversees these laws at the federal level. The Federal Trade Commission enforces competition and consumer protection laws that prevent anticompetitive behavior. Antitrust laws in the US result in competition among sellers that result in lower prices, higher quality products and more choices for consumers. US has been operating under premise market forces preferred over government intervention in commerce. This approach protects against stagnation, which often results if a government attempts to step in and shape markets. This approach has been fundamental to creating one of the most vibrant and dynamic economies in the world and has spurred innovation and entrepreneurship in the US and in Maine.

LD 1815 would make Maine an outlier to every state in the country and instead, model Maine’s law on the European model. Instead of focusing on consumers, European laws focus on competitors. EU laws protect weak competitors and emphasize “fair markets” at the expense of consumers. This has resulted in low economic growth, higher unemployment and less innovation than the American economy.

What this proposed bill represents is a threat to our economy period. No other state in the nation has adopted this law. The same national advocacy group that is pushing this law in Maine has unsuccessfully tried to pass it in New York for several years. Make no mistake

about it, this bill will drive investment out of Maine. No business will want to do business in a state where their livelihood is at risk. Enactment of L.D. 1815 will have a chilling impact on investment for any business small, medium or large, here in the state and could expose them to massive lawsuits. Meritless lawsuits would become the norm and businesses would be subjected to these lawsuits that could result in treble damages for which there is no legal precedent in the US.

Maine is a huge entrepreneurial state. Over 85% of our businesses are considered small businesses. Encouraging innovation is a key to driving long term economic growth here in the state. Maine's strategic plan emphasizes the need to increase innovation as a driver of growth. This bill will stifle innovation. No business would want to operate in a state where they are exposed to frivolous lawsuits for producing or coming up with products that are new to market and of being accused of dominating that market. UMAINE has an entire Office of Strategic Partnerships, Innovation and Resources dedicated to innovation. A lot of entrepreneurs work with UMAINE. There are some very exciting things happening at UMAINE with innovation, particularly in the field of biotechnology. If anything, we need to encourage these efforts to invest in innovation. This will only serve to discourage those efforts. If this bill were to pass in Maine this will serve to discourage capital investment in innovation.

Our antitrust laws here in the US were developed for a reason, to protect consumers from anticompetitive behavior and promote aggressive competition in an open market. This results in lower prices, encourages innovation and more competition, which again, benefits the consumer and businesses alike. This bill will gut our antitrust laws and leave consumers and businesses unprotected.

Ultimately, this law attempts to align Maine law with European antitrust laws, but in the process would make Maine an outlier among all states with respect to antitrust laws, which would have disastrous consequences on our economy. Maine businesses would operate under different laws than their competitors in other states.

Finally, the bill attempts to deal with notification requirements with respect to mergers and acquisitions. It is our understanding that the Uniform Law Commission (ULC) is currently considering model legislation for how states AG's offices can gain access to pre-merger filings at the federal level. The Commission has not yet finished its work and we would urge that any legislation dealing with this issue be put on hold pending the release of the ULC's work.

If changes are needed to antitrust laws, then Congress should deal with that issue putting all states on the same level playing field. For these reasons and more I urge you to vote No on L.D. 1815.

I would be happy to answer any questions and will be available for work session. Thank you.