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Testimony of Nate Cloutier

Before the Joint Standing Committee on Judiciary
January 7, 2026

In Opposition to LD 1761, “An Act to Prohibit Indemnification Agreements”

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, my name is Nate Cloutier, and I am here on behalf of HospitalityMaine (HM) and the Maine Tourism Association (MTA). HM represents Maine’s hospitality industry, including lodging establishments, restaurants, and related businesses. MTA has been promoting Maine and supporting tourism-related businesses for over 100 years. HospitalityMaine and the Maine Tourism Association respectfully oppose LD 1761, “An Act to Prohibit Indemnification Agreements.”

Indemnification provisions are a standard feature of contracts used throughout the hospitality and tourism industries. They are routinely included in service agreements with third-party vendors such as snow removal providers, janitorial services, maintenance contractors, security firms, event service vendors, and tour operators. These provisions allow parties to allocate responsibility in advance when more than one entity is involved in delivering services on an operator’s premises.

Indemnification does not determine fault and does not eliminate liability. Rather, it establishes by contract how responsibility for defense and costs will be handled if a claim arises in connection with contracted work. For hospitality and tourism operators, that clarity matters because they regularly coordinate services performed by third parties on property they own or operate. When indemnification provisions are unenforceable, these questions are more likely to be resolved after the fact through litigation or insurance disputes, increasing uncertainty and costs even where fault ultimately lies elsewhere.

A common example illustrates the point. A lodging establishment contracts with a snow removal company to plow and salt its parking areas. If the contractor fails to adequately salt and a guest is injured, an indemnification provision helps ensure that responsibility for the contractor’s performance rests with the contractor. Removing such provisions would increase exposure and prolong disputes even where the underlying

failure relates to services performed by a third party.

LD 1761 would broadly limit the enforceability of indemnification provisions across contracts generally, without narrowing its application to specific types of agreements or contexts. That breadth raises concerns about predictability and consistency in contract enforcement and increases the likelihood that courts will be asked to resolve risk-allocation questions after an incident occurs, rather than allowing parties to address them upfront through contract.

We recognize that contractual risk allocation raises legitimate policy considerations. Our concern is that LD 1761 addresses those considerations through a broad rule that alters long-standing principles of contract enforceability, with implications that extend well beyond the specific circumstances of any single agreement.

For these reasons, HospitalityMaine and the Maine Tourism Association respectfully urge the Committee to vote “Ought Not to Pass” on LD 1761. Maintaining the existing legal framework preserves a well-established contractual tool that supports clarity and predictability in the hospitality and tourism industries.

Thank you for your time and consideration. I would be happy to answer any questions.