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LD 1761 “An Act to Prohibit the Transfer of Liability Relating to a Party’s Own Negligence or Liability in Contracts,” *as amended*

Testimony Neither For Nor Against
Amanda Egan, Incoming Executive Director
January 7, 2026

Senator Carney, Representative Kuhn and Members of the Committee on Judiciary, my name is Amanda Egan, Incoming Executive Director of Maine Woodland Owners speaking today Neither For Nor Against LD 1761 currently titled “An Act to Prohibit the Transfer of Liability Relating to a Party’s Own Negligence or Liability in Contracts,” as amended.

Maine Woodland Owners is a statewide nonprofit that advances stewardship of Maine’s small woodland resources through the encouragement of good forest management, support for the state’s 86,000 small private woodland owners, and a land trust that conserves working forests. While this bill aims to address power imbalances in contracts, the broad and unclear language raises some questions for our organization.

1. How will this affect contracts and agreements that are mutually developed to benefit only one side? Private landowners frequently enter into contracts to allow public use of their land, without any benefit to themselves. For example, 96% of Maine’s snowmobile trail system relies on private landowner permission, which is granted through a variety of contracts, agreements, and permits that often include an indemnification clause. While the Landowner Liability Law provides limited liability for recreational and harvesting activities, indemnification clauses bolster it. Small landowners are looking for full assurance that they are not increasing their liability by allowing the public to use their land, particularly when they gain nothing by doing so. Removing indemnification provisions could disincentivize landowners from opening their land to the public.

2. How will this affect conservation easements and other contractual agreements that preserve natural, scenic, and historic values? Land trusts like us throughout the state hold a vast number of conservation easements with private landowners that create permanent land-use restrictions to benefit the environment and public. Conservation easements typically include indemnification clauses that protect both parties – the grantor (landowner) and the holder (e.g., land trust) – by defining and assigning risk. This is critical to ensure long-term viability of the easement. I'm not sure how many organizations would be willing to hold a conservation easement without indemnification. Additionally, indemnification is a common provision in federally funded easements.
3. What about cases of joint negligence? We have indemnification provisions in some of our contractual agreements, including with the State, that extend to the joint negligence of the parties, but do not extend to losses caused by the indemnified party's sole negligence or willful misconduct. Are these provisions void and unenforceable?
4. Would Directors and Officers insurance be considered an exception in this bill? As a nonprofit organization, we rely on this insurance to carry out our mission without worrying about our financial resources being drained by the high costs of a legal defense in lawsuits and wrongful allegations.

Thank you for this opportunity to bring these questions to the Committee.