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To: Sen. Chip Curry and Rep. Tiffany Roberts, co-chairs
Members, Committee on Innovation, Development, Economic Advancement & Business

From: David R. Clough – Maine State Director
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Re: LD 1815 – An Act to Protect Maine's Consumers by Establishing an Abuse of Dominance Right of Action and Requiring Notification of Mergers

This statement in opposition to LD 1815 is on behalf of the thousands of small business owners in Maine who are members of the National Federation of Independent Business. Member businesses collectively span a wide range of economic activities; provide jobs and paychecks to about 30,000 people; and help form the economic backbone of their communities as well as Maine overall.

LD 1815 has potentially far-reaching effects on Maine businesses, workers and customers.

As stated in the summary of the legislation, “This bill establishes a right of action against a person with a dominant position in the conduct of any business, trade or commerce, in any labor market or in the furnishing of any service in this State that abuses that dominant position.”

Advocates claim this legislation is pro-small business and will break up “big tech” and large retail operations; however, this legislation is far from pro-small business and instead threatens the livelihoods of the small, independent businesses and entrepreneurial spirit woven into the economic fabric of our towns.

LD 1815 creates a new “abuse of dominance” standard that is defined as a person who “has a of 60% or more of a relevant market as a seller” or “has a share of 50% or more of a relevant market as a buyer.” The legislation goes on to assert that a person “with or more employees and \$25 million in annual revenues” is presumed to abuse a dominant position if the person engages in at least one of nine activities specified in the proposal.

These are relatively low thresholds that could easily sweep up small businesses that are truly neither monopolistic nor dominant.

- How will a “relevant market” be defined and does it include a narrow or wide geographic area?
- Would a receding economy elevate a remaining small business to a dominant position?

It is clear the definition of “relevant market” could become a highly contentious and strongly litigated matter in most or all instances the law is invoked against a person or business.

What is the economic benefit of allocating financial resources to litigation instead of building a stronger workforce and investing in ways that will sustain a small company against foreign and national competitive pressures?

What is the economic benefit of creating disincentives for entrepreneurs to pursue innovation and open up a significant new market for a product or service?

How will an entrepreneur attract investors to finance breakthrough innovation and growth in the face of the desired success being penalized by a market dominance law? What signal would LD 1815 send to people who aspire to earn a spot on the INC. magazine annual list of 5000 fastest growing private companies in America?

From a small business owner perspective, LD 1815 also creates a potential poison pill for buyers of a small and successful company – and creates a potential roadblock to retiring on fruits of many years of hard work (sweat equity), because buyers may not want to risk the market dominance litigation time bomb created by LD 1815.

There are numerous other questions that concern a small business owner in the face of LD 1815. What will be the availability and cost of legal advice and representation? What will be added cost of compliance to avoid missteps and fill out new paperwork just to demonstrate the absence of market dominance?

What will be the unintended consequences of such a novel law as that proposed in LD 1815? What will be the measurable and immeasurable costs for Maine taxpayers and the Main economy?

LD 1815 sends a strong signal to not innovate in Maine. “Go west and innovate for success elsewhere but not in Maine” is the wrong message for existing and future entrepreneurs.

We urge an OUGHT NOT TO PASS report and thank committee members for being mindful of Maine small business owners.