

**Testimony of
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Executive Vice President
On Behalf of the Maine State Chamber of Commerce
In Opposition to L.D. 1711, An Act to Enhance Enforcement of Employment Laws**

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Senator Hickman, Representative Sylvester and members of the Joint Standing Committee on Labor, and Housing, good afternoon, my name is Peter Gore. I am the Executive Vice President at the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses providing you with our testimony in opposition to **L.D. 1711, An Act to Enhance Enforcement of Employment Laws.**

The breadth and novelty of the proposed legislation make it difficult to capture all of the objections to the bill. Boiled down, the bill would create a process by which the state would confer the power of the state on individuals and entities to function essentially as vigilantes, seeking out any violation of many of the state's employment laws including the Maine Human Rights Act based on a mere allegation, who could then leverage the alleged violation into causes of action purportedly on behalf of more than one employee for financial and political gain.

As this Committee knows, there is a robust legal practice in Maine that is committed to pursuing claims for employees alleging illegal employment discrimination, whistleblower claims, wage and hour violations, etc. Because the applicable statutes provide for an award of attorney fees for prevailing counsel, employee's counsel are almost always engaged without paying a retainer or the fees incurred with his or her employment counsel. There is no evidence to suggest that an employee cannot find counsel.

Almost all of the underlying employment statutes currently authorize the Attorney General, the Department of Labor, or the Maine Human Rights Commission to intervene or investigate an alleged violation of the employment statute including the Maine Human Rights Act. The Chamber is unaware of any data that suggests that the OAG, the DOL, and or the MHRC has failed or otherwise been unwilling to fulfill its responsibilities in this area. There is no data to suggest that there is an enforcement problem or that such private enforcement actions are necessary.

Despite the lack of evidence of a problem, the bill proposes to empower unions and other non-governmental agencies to essentially take on the power of the Attorney General, the

Commissioner of Labor, and or the Executive Director of the Maine Human Rights Commission. The legislation raises serious questions about the delegation of authority from the state and these officers to private entities acting as the state. We have not had time to research fully the legality of such a delegation, but we do know enough now to say that such a delegation requires incredibly careful consideration.

In raising these concerns, the Chamber stresses that these enforcement actions are not just about money paid by employers, not that money from employers is unimportant. Section 840-B makes it clear that these actions can seek injunctive relief – that is orders from the Court that regulate the conduct on behalf of the state, of however many parties the case may have. Normally, a suit on behalf of the state is subject to oversight by an officer who is in charge of an agency or department, and who is, in turn, accountable to this legislature and or the voters. To whom is the private attorney authorized by this bill accountable for the relief he seeks and obtains from the court – on behalf of the state?

The bill also has fiscal consequences. Proposed Section 840(C), (7)(A)(4) provides that if the Attorney General or the responsible official substantially prevails in the private enforcement action, the Attorney General or official, “must provide fair compensation for the attorney’s fees and cost expended on behalf of the whistleblower in instituting the private enforcement action.” Thus, it appears the state will now be liable for the legal fees of the employee’s lawyer when the state prevails? Where does that money come from? What happens when the state thinks the settlement result is acceptable but is held up over the size of the fees sought by the employee’s counsel, and the defendant employer balk at paying those fees? Who is in charge? Would this not compromise the sovereignty of the state?

The legislation also ignores decades of rule and decisional law on class actions. Our court’s civil rules do allow for the claims of numerous plaintiffs, employees in this context, to be aggregated if there is a commonality of a factual or legal issue underpinning the claim. Proposed Section 840(C)(9) of the proposed bill carves these private enforcement actions out from all of these rules and decisions. In discussions I have had with attorneys in this field, they, and we, are unaware of any shortcoming to this class action process.

LD 1711 is a very radical bill. There is a long established and very successful jurisprudence on employment matters that has worked very successfully. LD 1711 is not a tweak of that jurisprudence. It is a sea change allowing for unions and others to take over the process instead of the members of the executive branch being accountable to you and the voters. It is for these reason that the Maine State Chamber is strongly opposed to this bill and urges a unanimous ought not to pass report. Thank you.