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President of the Senate

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Augusta, Maine 04333

Testimony in Support of LD 1711
An Act To Enhance Enforcement of Employment Laws
Presented to the Joint Standing Committee on Labor and Housing
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Senator Hickman, Representative Sylvester, and members of the Joint Standing Committee on Labor and Housing, my name is Troy Jackson and I represent the fine people of northern Aroostook County in Senate District One. I am here today to present LD 1711 "An Act To Enhance Enforcement of Employment Laws".

All Mainers deserve a safe work environment free from harassment, abuse, and discrimination. They should be able to speak out and take action when they experience or witness any wrongdoing. However, too many Mainers have signed away their ability to speak out the minute they sign an employment contract.

LD 1711 seeks to protect and support the safety and security of Maine workers who are brave enough to speak out and report wrongdoing in the workplace. Whether it's a violation of employment law or human rights law, Mainer workers should be able to speak out and demand justice. And the current law is failing them.

This proposal would allow a "whistleblower" to work with public agencies, such as the Attorney General's Office, the Maine Department of Labor, and the Maine Human Rights Commission, to bring a private enforcement action for a workplace violation. Although Maine has a Whistleblowers' Protection Act, and anti-discrimination and wage and hour laws on the books, their reach is limited, and they can be hard to enforce.

This is something I've seen all my life in the logging industry. Despite these laws, too many Maine workers still face wage theft, misclassification, health and safety violations, sexual harassment or discrimination in the workplace, overtime violations or more.

In order to be protected under the Whistleblowers Act, the employee must first report the wrongdoing to the employer. Due to the imbalance of power, this requirement is problematic. Additionally, the scarce number of investigators working in the Department of Labor cannot adequately cover the number of businesses in Maine. Currently there are only five Labor and Safety Inspectors for the entire State, although the department plans on adding another in the coming

fiscal year.¹ These inspectors, according to the 2020 annual average, oversaw 55,331 employers and 584,143 employees. The numbers look even bleaker for 2021 because the March estimate put monthly payroll jobs back up to 609,600.² Obviously, the resources needed to ensure worker protections like minimum wage, earned sick and family leave, workweek standards, and protections against discrimination and harassment cannot be met with these limited resources.

Another imbalance of power is the growth of forced arbitration clauses in employment contracts. Many of these clauses are buried in the fine print, are difficult to comprehend, and are required in order to get a job. Such agreements limit employees' legal rights and muffle corporate accountability because there is no public record. One way we can protect our workers and those employers who follow the rules is to enact policies like the private enforcement action outlined in this bill. If enacted, one of the bonuses is that a percentage of the penalties from a successful action will be deposited into the Community Outreach and Labor Education Fund. This nonlapsing fund will be administered by the Department of Labor and will assist workers enforcing employment rights by providing training materials and technical assistance, counseling, investigative research, and referral services.

I realize this is a complicated proposal and those of you who were on the Labor and Housing Committee last session will likely remember the amount of work stakeholders committed to put this bill in its current form. It is based on a successful model, the California's Private Attorney General Act, which has been in existence since 2004.³ It is a model that would enhance the enforcement of workplace violations that hurt both workers and employers in the State, such as the fraudulent misclassification of employees as independent contractors. By protecting those who take the risk of reporting workplace misdeeds, the integrity of our economic structure is protected as well. For these reasons, I ask you to join me in supporting LD 1711.

Again, thank you for your time and the great work you do. I will attempt to answer any questions, but am confident there are others who will testify on this bill who may be more adept at answering the specifics of its legal intricacies.

Sincerely,

Troy Jackson
Senate District 1
Maine Senate President

¹ Information provided by the Director of the Maine Bureau of Labor Standards

² Information provided by the Center for Workforce Research and Information - <https://www.maine.gov/labor/cwri/>

³ <https://www.labor.ca.gov/resources/paga/>