

Peter M. Gore for
The Maine State Chamber of Commerce
In opposition to
L.D. 1201, An Act To Protect Employees from Abusive Work Environments
April 8, 2013

Senator Patrick, Representative Herbig, members of the Joint Standing Committee on Labor, Commerce, Research and Development, my name is Peter Gore, I am the Vice President for Advocacy at the Maine State Chamber of Commerce, a statewide business organization made up of both large and small businesses, here to provide you with our testimony in opposition to **L.D. 1201, An Act To Protect Employees from Abusive Work Environments**.

L.D. 1201 proposes to create a broad new protection in law for employees from “abusive” work environments. The bill attempts to regulate both the behavior and actions of employers and employees as well in the workplace. Failure to protect employees from an abusive work environment could result in a private right of action brought about by an aggrieved employee against the employer, a fellow employee, or both.

Currently, no other state in the nation has enacted legislation such as that proposed in L.D. 1201. The issue of workplace “abuse” whether verbal or physical has been disused in the legislature in the past and rejected. Maine has a very detailed, very accessible, well used Protection from Harassment statute; 5 MRSA Section 4651. There is no reason that an employee cannot turn to this statute and rely on it. Moreover, it allows the court to immediately intervene and regulate the conduct and provides monetary remedies. This statute is in addition to other protections from discrimination, harassment and a hostile work environment additionally found in the Maine Human Rights Act, as well as federal prohibitions covering similar topics. In addition, if actual assaultive behavior takes place in the workplace, the criminal code would likely come into play against the perpetrator.

As drafted, L.D. 1201 contains very broad definitions about what may or may not constitute “abuse.” In fact, abuse is defined only as “what a reasonable person would find to be abusive.” I submit that this is likely to be different for different people. In addition to actual acts, “omissions” are included as potentially abusive. Thus neglect – benign or otherwise also create exposure to employer and employees.

L.D. 1201 would make employers liable for the actions of their employee’s against other employees, even if they were unaware of the “abusive” behavior. In addition, the bill pits employee against employee, with the potential for creating the very hostile work environment this bill seeks to remedy.

In addition to the likelihood of excessive litigation and thus higher cost of doing business, LD 1201 creates an exception to the long held provision in Maine workers compensation law of "exclusive remedy." Under Maine law, workplace injuries – regardless of their origin and fault – are covered under the workers compensation act. In Maine, all employers, with few exceptions, are required to secure and pay for workers compensation insurance coverage. In the event of a workplace injury, employees are entitled to certain, swift, but time limited benefits that pay both wage replacement and medical costs while they are unable to work. This is the case regardless of who is at fault for the injury. In return, employees are barred from seeking additional remedies against the employer in the form of lawsuits. Thus workers compensation is the "exclusive remedy" of recovery for an injured worker.

Under this bill, if one employee or an employer assaulted another employee, the resulting injuries and any lost time would be covered by the employer's workers compensation insurance. But the aggrieved party would still be able to bring suit against the employer, and any comp benefits would be offset should there be additional recovery in the courts. We are strongly opposed to any exceptions to exclusive remedy, even if benefits are offset.

While L.D. 1201 may be well intended, we believe it is a deeply flawed bill that will lead to both higher costs of doing business as well as create confusion in the workplace. In many ways, L.D. 1201 is an attempt to regulate manners, and that cannot be done by statute. We can all agree that it is morally and ethically wrong for either an employer or an employee to engage in the type of behavior this bill attempts to address, but is that grounds for making it illegal behavior? The state in its wisdom had said yes in some circumstances, and those protections are currently in place. But we are opposed to going beyond that to try to tie individual perceptions to illegal acts that could result in litigation.

The Maine state Chamber of Commerce is strongly opposed to L.D. 1201, and we urge this committee to reject it unanimously. Thanks you for the opportunity to provide you with our comments.