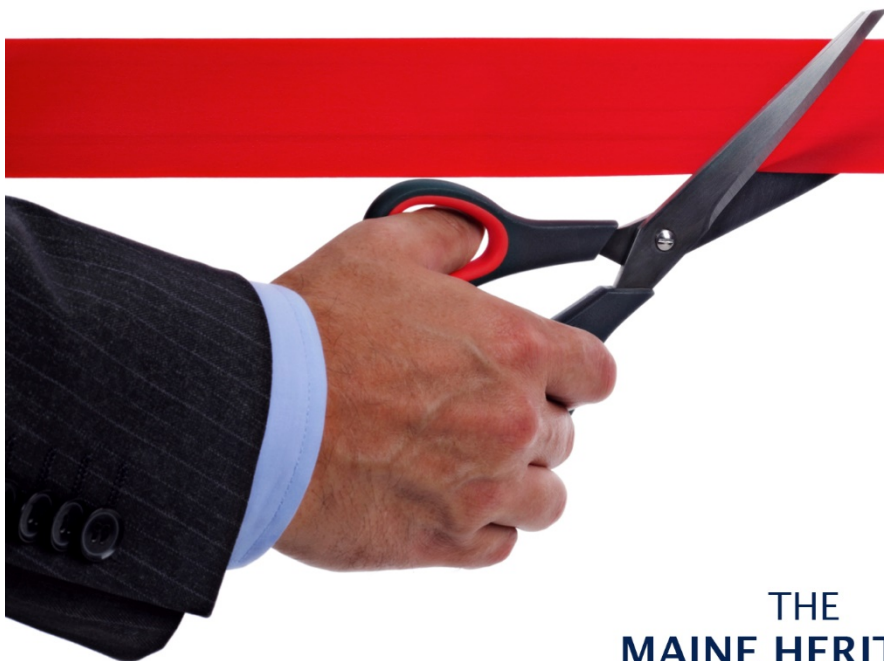


THE MAINE
RED
TAPE
GUIDEBOOK

CONFRONTING MAINE'S MOST
BURDENSOME REGULATIONS

2016



LIAM
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POLICY ANALYST

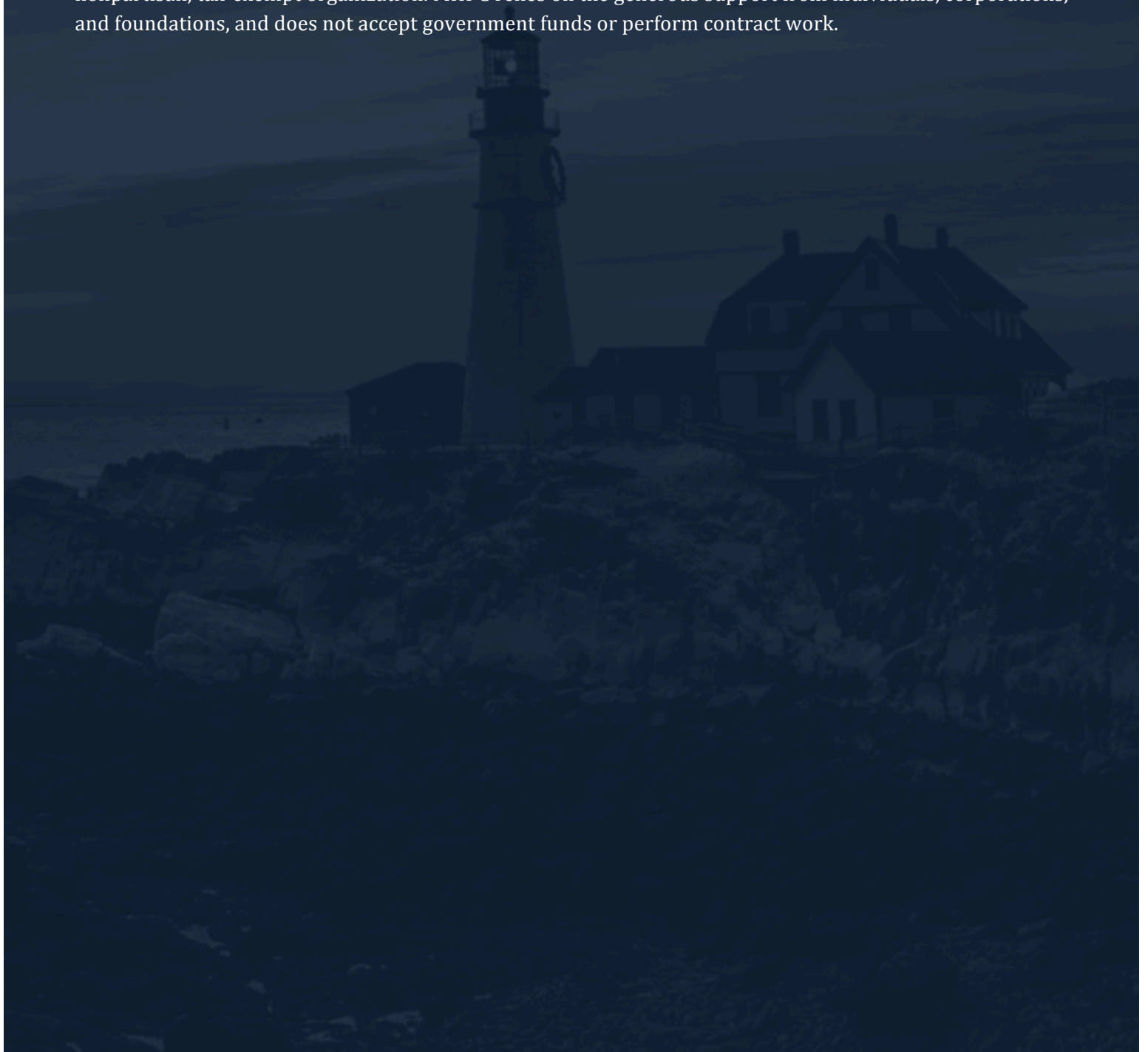
THE
MAINE HERITAGE
POLICY CENTER
We the people of Maine

About The Maine Heritage Policy Center

The Maine Heritage Policy Center is a research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values – all for the purpose of providing public policy solutions that benefit the people of Maine.

MHPC's staff pursues this mission by undertaking accurate and timely research and marketing these findings to its primary audience: the Maine Legislature, nonpartisan Legislative staff, the executive branch, the state's media, and the broad policy community. MHPC's products include publications, articles, conferences, and policy briefings.

Governed by an independent Board of Directors, The Maine Heritage Policy Center is a nonprofit, nonpartisan, tax-exempt organization. MHPC relies on the generous support from individuals, corporations, and foundations, and does not accept government funds or perform contract work.



INTRODUCTION

For several years in a row, Maine’s business climate has ranked among the worst in America, with our regulatory environment earning especially low marks. In 2015, the Pacific Research Center ranked Maine 45th in the country based on an assessment of 14 regulatory policies.ⁱ CNBC and Forbes both ranked Maine among the worst five states for business.ⁱⁱ

The concern that Mainers have about excessive regulation was evident in 2011 when nearly 1,000 people across the state testified for more than 100 hours on LD 1, a piece of legislation that reformed several environmental regulations, created a special position to help small businesses navigate regulatory requirements, and directed government agencies to ensure that rules were relevant, clear, and reasonable. However, despite the progress Governor LePage has made in making Maine more hospitable to businesses, there is still much to be done.

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A recent informal survey of business owners conducted by The Maine Heritage Policy Center found that the overwhelming majority of respondents felt their regulatory burden had increased since they started their business, and many identified over-regulation as the most important obstacle they face.

Business owners voiced concerns over environmental policies that are too restrictive and stifle development, labor laws that hinder employment decisions and increase the regulatory cost of hiring more workers, and bureaucratic redundancy and convoluted that make it difficult for small business owners to get the information they need to comply with rules. Others noted the impenetrable legalese of most regulations and emphasized the need for simpler language, as well as faster processing time for requests to government agencies. While some pointed to specific issues, many businesspeople stated that the entire regulatory code needs to be re-evaluated—“the whole system needs to be reviewed and changed,” said a Master Maine Guide. “All the snowflakes add up to one giant snowball,” said the owner of a boat building company.

This report exposes some of the burdensome regulations that lawmakers in Augusta have passed over the years that have held back Maine’s economic growth. Through conversations with trade associations, business leaders, legislators, regulatory agencies, and Chambers of Commerce, as well as our own analysis, The Maine Heritage Policy Center has selected some of the laws and regulations currently on the books in Maine that hinder business growth and discourage entrepreneurship. As lawmakers look to improve Maine’s economy, attract investment, reduce unemployment, and raise wages, repealing these harmful regulations should top their list of goals.



FEDERAL REGULATIONS

Before delving into specific, state-level regulatory problems, it is important to emphasize that federal laws have an enormous impact on the performance of businesses in Maine. Every year, lawmakers and bureaucrats in Washington add thousands of rules to the existing framework of convoluted regulations. From 1976 to 2000, the number of final rules published in the *Federal Register* nearly doubled,ⁱⁱⁱ and the Obama

administration alone has enacted more than 21,000 regulations so far.^{iv} According to the Competitive Enterprise Institute, the total compliance cost of federal regulations on the United States' economy is nearly \$2 trillion annually, equivalent to 12% of our Gross Domestic Product.

Here are five of the worst federal regulations for Maine's business community.

EPA "Waters of the U.S." Rule

In 1972, Congress passed the Clean Water Act under its constitutional authority to regulate interstate commerce. The law enabled the EPA to establish rules to protect the quality and sustainability of waterways used to transport goods between states.

Repeatedly, the EPA has tried to expand the scope of its regulatory power beyond what Congress authorized. Several court rulings in recent years have rebuked the agency for trying to regulate small pits, ditches, or wetlands that could not possibly be used for interstate commerce.^v

In 2015, however, the EPA finalized a rule that interprets the Clean Water Act's phrase "navigable waters" of the United States as including ditches, puddles, and ponds. Virtually every drop of water in the United States, under the rule, is subject to regulation and permitting requirements.

The impact of this rule is likely to be most acute in the agricultural industry, where irrigation techniques will now attract additional bureaucratic scrutiny. Jon Olson, executive secretary of the Maine Farm Bureau Association, warned in 2014 that "normal farming practices conducted near water, even parts of fields that

are only wet during rainstorms, could be subject to federal permits" or hefty fines.^{vi} Routine activities like tilling land or moving cattle across streams could be subject to red tape that small and medium-sized farms struggle to understand.^{vii} Last year, the National Corn Growers Association predicted that the rule could have "a significant and negative impact on farms and ranches across Maine."

Small business owners from around the country testified before Congress that the rule's vague language and the EPA's resistance to public comment suggest a massive regulatory expansion with unpredictable consequences.^{viii} Alan Parks, an executive at a stone and gravel company in Tennessee stated: "The proposed rule has no clear line on what is 'in' and what is 'out,' making it very difficult for our industry and other businesses to plan new projects and make hiring decisions...That means a whole host of economic activity in a community will not occur — all...in the name of protecting a ditch or farm pond."^{ix}

Fortunately, implementation of the rule is on hold after a federal court questioned its validity.^x Further litigation will determine whether it is struck down or allowed to move forward.

The Affordable Care Act (“Obamacare”)

With premiums and deductibles rising, Obamacare adds many harmful regulations at a time when Maine businesses are struggling. Though robust health benefits are crucial to attracting and retaining highly skilled workers, many employers – faced with shrinking profit margins and mounting regulations – are forced to drop employer health coverage. In 2013, only 34.7% of firms in Maine with fewer than 50 employees offered health insurance.^{xi} Nationwide, nearly 20% fewer small businesses provided health insurance in 2011 than in 2000.^{xii} And while Obamacare’s impact has been more recent, it has made things worse.^{xiii}

In 2012, The Maine Heritage Policy Center conducted a case study of Obamacare’s impact on a concrete company in Maine. During the summer, the company adds about 50 seasonal workers to its normal workforce of 60 employees. Prior to Obamacare’s enactment, the company was not obligated to offer health insurance benefits to temporary employees who worked fewer than 6 months. However, Obamacare requires employers to give employees access to health insurance benefits within 90 days from the date of hire, meaning that many temporary employees now have access to health coverage. The study found that these new rules led to a 27% increase in the costs of health insurance for the company. As a result of surging health care costs, Obamacare will actually motivate businesses to hire fewer workers, or cut health benefits entirely.

Three Obamacare provisions in particular are driving up premiums and reducing choice in the health market. First, its community rating requirements restrict the ability of insurance companies to adjust premiums based on age,

gender, or health care utilization. Thus, insurance prices are higher for young people than they would be in a free market, deterring them from purchasing coverage. Second, Obamacare’s guaranteed issue requirement allows people to sign up for insurance even after they get sick, which provides an incentive – especially for young, healthy adults – to forgo insurance until the need for medical care arises. Because of both community rating and guaranteed issue regulations, the insurance “risk pool” is older and sicker, and hence costlier to insure.^{xiv}

The third onerous Obamacare regulation requires all health plans to cover, at a minimum, services in ten categories, including maternity and newborn care, pediatric services, and prescription drugs.^{xv} Many consumers are forced to pay for coverage they neither need nor want, and insurance companies lack the flexibility to design products that meet the different needs of their enrollees. Young men, for example, who don’t take prescription medications and don’t have children, must still pay premiums for maternity care and other medical services they don’t need.

Obamacare also creates significant administrative burdens for relatively small businesses. It requires all companies with 50 or more workers to track employees’ hours, absences, and how much they spend on health insurance. As Joyce Rosenberg, a business writer for AP, points out: “Many small businesses don’t have the human resources departments or computer systems that large companies have, making it harder to handle paperwork.”^{xvi} According to an estimate by the National Small Business Association, complying with the law can cost a small business more than \$15,000 per year.

The Dodd-Frank Act

In 2010, following a financial crisis fueled by irresponsible lending practices, reckless risk management, misguided government policies, and the collapse of the housing bubble, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, a massive 2,300 page overhaul of financial regulation. It is the longest and most complicated bill ever signed into law.

The law's purpose was to end "too big to fail," avoid future bailouts, restrict Wall Street's dangerous behavior, and promote financial stability. President Obama assured the public that the legislation would "lift our economy" and now-Senator Elizabeth Warren promised that it would "increase accountability in government."^{xvii} Yet despite these stated goals, the banks deemed too big are 80% bigger than before the banking crisis of 2008 and the six largest U.S. financial institutions now have combined assets of about \$10 trillion, amounting to almost 60% of GDP.^{xviii}

Rather than limit the growth and instability of large financial institutions, Dodd-Frank has devastated small banks and credit unions that Maine businesses rely on for credit. Last year, in an interview with *Mainebiz*, Christopher Pinkman, President of the Maine Bankers Association, identified regulatory relief as a major concern for the banking industry and said that "[Dodd-Frank has] made running a financial institution much more expensive."^{xix} Research by the American Legislative Exchange Council found that Dodd-Frank created "huge government bureaucracies that have slowed economic growth and harmed small businesses. The scope of Dodd-Frank's red tape has ensnared banks in a regulatory web that continues to stifle innovation and economic recovery. The law is so convoluted that the average compliance cost is now 12 percent of a bank's operating costs and can be

more than double that amount for smaller institutions."^{xx}

The regulatory costs are crippling small banks, which have shrunk by 19 percent in total assets since the law's passage. The disappearance of so many small institutions reduces consumer choices and decreases competition, which adds additional banking costs and hassle to people seeking to receive loans. According to the Federal Deposit Insurance Corporation, no banks in Maine hold assets in excess of \$10 billion, and nearly half have between \$250 million and \$1 billion in assets. No new banking institutions have opened in Maine in the last three years.^{xxi} Representative Bruce Poliquin (R-2nd District) has urged Congress to reform Dodd-Frank regulations. "Our community banks and credit unions are the backbone of our economy. They want to be able to lend money to Mainers who are interested in purchasing a new truck or putting a new engine on a lobster boat but they are unable to because of Dodd-Frank's net of regulations," he wrote last year.^{xxii}

The American Action Forum has found that the law will reduce economic growth by \$895 billion over ten years and compel businesses to spend more than 12 million hours on paperwork annually.^{xxiii} Large institutions like JP Morgan – which hired more than 10,000 employees to oversee compliance – are able to absorb the staggering costs; many small banks cannot.^{xxiv}

According to several researchers at Harvard University, the federal government should expand the regulatory exemptions for small banks and establish a bipartisan commission to look for opportunities to streamline and simplify regulations for small banks, which are faced with unduly burdensome oversight.^{xxv}

Department of Labor Overtime Rules

The Department of Labor is considering two new rules that would have sweeping effects on small businesses, retirees, and investors. Though the regulations have yet to be finalized, they are examples of the federal government's ongoing assault on private enterprise and state sovereignty.

Overtime rule

In June of last year, the Obama administration announced its intention to raise the threshold for overtime pay for nearly 5 million American workers, including about 20,000 Mainers. A study by the National Retail Federation found that the changes could cost businesses nearly \$900 million annually in additional payroll and administrative costs, and noted that "an increase of the overtime threshold is likely to cause significant complications for business owners and create a series of unintended consequences, both legal and regulatory, that are likely to cost workers."^{xxvi}

Currently, workers earning less than \$23,660 annually are automatically eligible to receive overtime pay if they work more than 40 hours per week. For employees who earn more than \$23,660 a year, employers conduct a "duties test" to assess their eligibility; executive, administrative, or professional employees are exempt from the rule, as are many seasonal workers, fishermen, and farm workers. For instance, a manager at a fast-food restaurant may not be entitled to overtime benefits, despite earning \$30,000, working 55 hours a week, and performing duties similar to the kitchen staff.

The changes envisioned by the Obama administration would more than double the salary threshold, placing it at \$50,440 per year with annual inflation adjustments. The White House is also considering repealing various

exemptions to overtime pay eligibility, which it claims are either obsolete or easily exploitable by callous employers.

Though the desire to enhance worker compensation for overtime is understandable, the rule's impact on businesses will likely lead employers to restructure their workforces by hiring more part-time, entry-level workers and reducing opportunities to move into managerial roles. For some companies that compensate employees at the lower end of the pay scale, the effects could be more dire. Testifying to Congress last year, the Society for Human Resource Management warned that the rule "would present such a financial hardship that many small companies and community service providers would be forced to close."^{xxvii}

According to Julie Rabinowitz, director of communications for the Maine Department of Labor, the rule change will be especially detrimental to employers in Maine, which has lower wages – and thus fewer exempt employees – than the rest of the country.^{xxviii} In 2014, the average private-sector worker in Maine earned less than \$40,000. As Drummon Woodsum, a business law firm, points out, "if an accountant in Maine earns \$40,000 per year, but an accountant in California earns \$60,000 per year, the accountant in Maine would not meet the minimum salary threshold and would [be eligible for] overtime [pay]."^{xxix}

The vagueness of the rule could also cause confusion and additional administrative hassles for businesses. "In the world of email and texting and 24/7 connectivity, when does work stop?" Chris Hall of the Portland Chamber of Commerce told the *Bangor Daily News* last year. "And if someone is only allowed to work 40 hours a week, if they go home and do email for two hours, does that mean they have to be paid overtime for

those two hours? How do you track it, how do you manage it as an employer, and what happens

if you don't?"

Department of Labor Fiduciary Rules

The Department of Labor is preparing to finalize a new rule that would have significant repercussions for investors and Maine workers preparing for retirement. The change would broaden the definition of "fiduciary" to include virtually anyone giving investment advice for retirement accounts (including broker-dealers, investment managers, appraisers of self-directed IRAs, and insurance agents who recommend annuities) and would require that fiduciaries act in the "best interest" of their clients.^{xxx}

As the Competitive Enterprise Institute explains, "it will be almost inevitable that financial service providers will restrict choices of investment vehicles and strategies and look for a 'safe harbor' of particular investment that government would bless." Judging the perspicacity of investment decisions is subjective, and it is unclear how government agencies would enforce the "best interest" requirement. Venture capitalist Peter Thiel, for example, invested in Facebook in its early stages partially through his IRA—an excellent decision in hindsight, but one that may have been seen as ill advised. As the FreedomWorks Foundation points out, "Whether inclusion of these alternative assets is a good investment strategy is a matter of opinion, but it should be a choice for the investor to make."^{xxxi}

The rule also limits that availability of commission-based compensation for retirement accounts in order to avoid potential conflicts of interest arising from a financial advisor's pecuniary stake in investment decisions. The rule forces investment firms to either shift to a fee-

based model or comply with the "best interest contract exemption" which requires that steps be taken to mitigate conflicts of interest, ensure that the client's interests are protected, and disclose compensation information.^{xxxii} Yet, as the *Wall Street Journal* has emphasized, a fee-based compensation arrangement doesn't eliminate all conflicts of interest; advisers still have an incentive to manage as much of the client's funds as possible, and to build unnecessarily complex portfolios to convince clients that their services are needed.^{xxxiii} In addition, commission-based products can better serve some consumers over the long-term, especially those who need infrequent advice and for whom annual fees would be more expensive than occasional commissions.

Several analyses have found that the rule change will reduce retirement savings, disadvantage middle-income workers, and drive small investors out of business. With more than 86 percent of retirement assets in the United States in commission or transaction-based accounts, the rule would likely cause a massive shift to fee-based compensation, forcing clients to pay up to \$1,500 in additional fees.^{xxxiv} In a recent report, the Competitive Enterprise Institute predicted that the regulations would "cost middle class savers \$80 billion in lost savings, imposing big regulatory barriers for small investment portfolios."^{xxxv} Rising costs and convoluted guidelines will create uncertainty among small investors, many of whom will leave the industry entirely, reducing the availability of retirement advice for the public.^{xxxvi}



STATE REGULATIONS

ALCOHOL CONTROL REGULATIONS

Maine has a long history of restricting access to wine and liquor. In 1851, we became the first state to ban alcoholic beverages entirely,^{xxxvii} which ultimately led to the adoption of the 18th Amendment in 1919 and the start of national Prohibition.^{xxxviii} Though the alcohol industry was largely deregulated at the federal level in the 1930s, many states – including Maine – maintain regulatory policies that undermine the free market, limit consumer choice, and hurt businesses.

While most states have adopted a privatized model in which liquor manufacturing, distribution, wholesale, and retail activities are controlled by private enterprise, Maine is one of 18 states that have chosen, to varying degrees, to involve state government in the liquor industry.^{xxxix} Our system – in which distribution, storage, and marketing of spirits is contracted to a private company for a commission – is unique in the United States. The current agreement, which began in 2014 and extends to 2024, is with Pine State Trading, based in Gardiner.^{xl} In 2015, Maine collected \$46 million from the contract, a result of surging liquor sales totaling more than \$155 million.^{xli}

Maine's government-enforced monopoly over an important sector of the liquor market hurts businesses. The Pacific Research Institute points out that “[liquor] control state regulations are denying wholesalers and retailers of a product category that could also be potentially growing their revenues...Both small and large wholesalers and retailers benefit in non-control states, and

those business in control states would benefit from the relaxation of the regulations. Overall, growth in small business revenues, small business employment and the number of small businesses (particularly in the retail and wholesale sectors) should be stronger in non-control states compared to control states.”^{xlii} The Mackinac Center published an article in 2011 urging states to relinquish their unnecessary role as liquor wholesaler that “drives up the cost of liquor and prevents price competition.”^{xliii} A 2012 study by the National Institutes of Health indicates that tight government regulation of liquor sales drives up prices by 6.9 percent.^{xliv}

Maine's monopoly over liquor wholesale and administration isn't the only form of detrimental alcohol control it enforces. Laws limit the number of agency liquor stores permitted to operate in a municipality, ^{xlv} restrict the types of liquor available to consumers, require restaurants to secure the approval of municipal leaders before obtaining a liquor license, ^{xlvi} dictate when alcohol may be sold, and force restaurants and bars seeking to sell liquor to purchase seven different licenses from several different agencies. ^{xlvii}

Lawmakers should re-evaluate Maine's archaic and restrictive alcohol control laws and strive to minimize burdens on businesses seeking to manufacture, distribute, or sell alcohol products. David Cho, a board member of a liquor store association in Washington, which privatized its liquor industry in 2012, commented on his state's decision to deregulate by saying, “A free market economy is always a good idea.”^{xlviii}

RESTRICTIVE LABOR LAWS

Right-to-work laws prohibit requirements that employees join or pay dues to a union as a condition of employment. They empower workers to decide for themselves whether or not joining a union is a good investment. Under right-to-work laws, employees are still free to join a union if they like, but workers can't be fired for failing to do so.

To date, 25 states have adopted right-to-work legislation, and several more – including West Virginia – are likely to soon follow.^{xlix} But though the majority of southern and Midwestern states have embraced the policy, not a single northeastern state has followed suit. In Maine, where union membership is about 11 percent, down from 13.4 percent in 2000^l, repeated efforts to pass right-to-work have been defeated by vociferous union leaders.^{li}

There is little doubt that forced unionization has a detrimental impact on Maine's economy. A 2014 report by the Competitive Enterprise Institute found that "the compelling preponderance of evidence suggests there is a substantial, significant, and positive relationship between economic growth in a state and the presence of a right to work law."^{lii} According to the National Right to Work Committee, growth in private-sector jobs, real manufacturing GDP, per capita disposable personal income, and population growth all strongly favor right-to-work states. In 2015, *The Washington Times* reported that, "Right-to-work policies aren't just good for employees and employers – they're good for unions, too. In a right-to-work state...the union has to convince current and potential members that it provides a valuable service at a reasonable price."

A study published in 2013 by the Mackinac Center for Public Policy found that "from 1947

through 2011, right-to-work laws increased average real personal income growth by 0.8 percentage points and average annual population growth by 0.5 percentage points in right-to-work states. From 1970 through 2011, these laws also boosted average annual employment growth by 0.8 percentage points."^{liii}

Peter DelGreco, president and CEO of Maine & Company, an organization that seeks to attract new businesses, jobs, and investment to Maine, has said that "the universe of decision makers who prefer right-to-work states is larger than the universe of decision makers who prefer non-right-to-work states. When we take out the sound bites and the passion and look simply at the totals, becoming a right-to-work states will encourage more decision makers to look at Maine."^{liv}

In 2015, two right-to-work bills were defeated in the Maine Legislature. Testifying in support of the bills, the Maine Department of Economic and Community Development stated that "data from the U.S. Census Bureau shows that since 1990 income growth in right-to-work state is actually outpacing non-right-to-work states. That same data indicates right-to-work states make up 13 of the 20 states with the fastest median household income growth. Maine was not in the top 20...Workers in Maine will still be able to unionize if [right-to-work laws are approved]. The only change is workers won't be forced, compelled to join a union in order to earn a paycheck."

Maine could become the first New England state to enact right-to-work legislation, giving us an important competitive advantage over our regional neighbors in business climate and job growth.

CAP ON CHARTER SCHOOLS

Charter schools are some of the most promising new developments in the quest to improve our Maine's public schooling system.

Compared to traditional public schools, charter schools are afforded greater flexibility in operations and teaching in exchange for higher standards and greater accountability. They foster a productive relationship between parents, teachers, and students, and are better able to adapt and respond to the unique needs of each student.^{lv}

The positive effects of charter schools extends well beyond our children. A recent study found that local communities and local economies receive many benefits from charter schools, primarily because of the wealth they generate, and the productive students they churn out. Students who attend charter schools are noted to be more productive, well rounded, community-minded, and better able to contribute as skilled workers – which are desperately needed in Maine.^{lvi}

But unfortunately, Maine has placed a strict cap on the number of charter schools that may educate our children. As laid out in the 2011 legislation that first allowed for charter schools, the Maine Charter School Commission may only approve ten total charter schools until the year 2022.^{lvii}

Predictably, this cap is proving to be far too low. As of January 2015, every charter school in operation had waiting lists of students who wished to enroll in one of these schools.^{lviii} With the eighth of the ten allowed charter schools opening in fall 2016, there are few opportunities

for these wait-listed students to be accepted to a charter school in Maine.^{lix}

This arbitrary cap on the number of charter schools not only limits the number of students who may attend on of these schools, but it hampers the potential of our Maine economy. A healthy economy depends upon a well-educated and qualified workforce, and requires students who have received a quality education. It is essential for businesses to have access to proficient and knowledgeable workers in order to compete and thrive.^{lx}

According to a study by the University of Tennessee, charter schools are showing favorable results in educating students in math, science, reading, and almost every other academic area. They utilize fewer resources and less money than traditional public schools, and serve a higher percentage of lower-income and minority students.

Charter schools are not only leading to better educated students, but individuals who are better prepared to face challenges as they enter the workforce. They are allowing for more competent workers, a higher amount of human capital, and are a piece of the equation which will solve the issues facing Maine's economy.^{lxi}

Maine legislators should recognize that the cap on the number of charter schools that can be created by the Maine Charter School Commission is unnecessary and counterproductive to economic growth and development. They should take steps to remove this oppressive piece of red tape and allow Maine's economy to have access to more qualified workers.

RESTRICTIONS ON MID-LEVEL DENTAL PROVIDERS

Government red tape is creating an enormous gap between what dental health professionals are qualified to do, and what they are legally allowed to do. The scope of practice for many of these professionals is shrinking drastically as government creates more rules and regulations and limits what procedures they may carry out. But many of the scope of practice limitations are completely arbitrary, and not based on any sound logic or reasoning.

For example, Independent Practice Dental Hygienists, which are an integral component of the dental health care field, are subjected to many pointless boundaries. They are allowed to apply fluoride, sealants, desensitizing agents, and antibiotics, but are prohibited from applying prescription strength teeth whitener. They are allowed to apply topical anesthetics, but are not allowed to apply local anesthetics.^{lxii}

Dental Hygiene Therapists are also greatly handicapped by scope of practice limitations. These professionals, who are similar to Nurse Practitioners in the health care field, are only allowed to practice under the direct supervision of an accredited dentist. They are prohibited from doing even small tasks such as cleaning teeth, unless a dentist is physically present within the same office and supervising their activities.^{lxiii}

And not only are dental health professionals limited by what procedures they may carry out, but they are also limited by what type of practice qualifies as “work experience.”

For example, dental hygienists must work 2,000 or 5,000 hours (depending upon their higher

education degree) under the supervision of a dentist in order to become an Independent Practice Dental Hygienist. However, any hours that are worked in a school or hospital setting, or in a non-traditional setting, do not count towards this requirement. Dental hygienists who have years of competent care are thus denied the ability to advance their career because of meaningless restrictions.^{lxiv}

And all of this red tape is not without cost. Maine’s dental industry is already falling short of meeting the growing needs of its population, and the increased limitations on the scope of practice for many professionals is only exacerbating this trend. In 2013, fifteen out of Maine’s sixteen counties contained areas with shortages of dentists. Amazingly, that same year, nearly half of all children enrolled in Medicaid did not regularly see a dentist.^{lxv}

As a result, Mainers are forced to seek dental health care in emergency room settings, which is extremely costly, and is a burden upon the entire health care system. It contributes to higher spending on health care, which limits our economic growth and potential, and prevents our economy from moving forward.^{lxvi}

Maine legislators must recognize that regulators should not be arbitrarily determining the scope of practice of health professionals. Dental health workers should be allowed to perform procedures that they have received adequate and proper training in, and should be limited only based upon their skills and abilities and industry-created boundaries.

CERTIFICATE OF NEED

Certificate of Need (CON) laws, first enacted in Maine in 1978, require health care entities to obtain government approval before making large expenditures to expand services, build a new facility, or purchase additional equipment. Proponents of Maine CON laws sought to limit unnecessary construction of medical facilities and duplication of health services, which they feared would increase health care costs. In order to regulate health care investment, a convoluted bureaucratic process was designed to process and review applications through the Department of Health and Human Services.

Health care entities seeking to make an investment under the purview of CON regulations commonly face four to ten months of delays, hearings, and analyses before the DHHS Commissioner makes a final decision. From 2008 to 2010 – during which the Maine Certificate of Need Unit processed 29 applications – more than \$500,000 in filing fees were collected, an average of \$17,240 per application.

Not only do CON laws impose a heavy burden on businesses, but after decades of data collection and analysis, it is clear that CON laws have failed to control costs while stifling competition in the health care industry. In 2004, the Federal Trade Commission and the Department of Justice jointly published a report titled *Improving Health Care: A Dose of Competition*, which states that “CON programs can pose serious competitive concerns that generally outweigh [their] purported economic benefits. Where CON programs are intended to control health care costs, there is considerable evidence that they can actually drive up prices by fostering anticompetitive barriers to entry.”^{lxvii} Joseph Miller, a former prosecutor at the Department of Justice,

remarked, “The Antitrust Division’s experience and expertise has taught us that Certificate of Need laws pose a substantial threat to the efficient performance of health care markets. We have examined historical and current arguments for CON laws, and conclude that these arguments provide no economic justification for depriving consumers of the benefits of free markets.”^{lxviii}

Examples of bureaucratic mistakes in gauging public need for additional health care infrastructure are countless. Officials in Hawaii denied a CON application to a company seeking to construct a new hospital on Maui, forcing the island’s 144,000 residents to rely on a single, government-run facility with little incentive to lower prices or improve performance.^{lxix} In North Carolina, the CON system denied an attempt by three neurologists to establish a small MRI facility in Garner, a suburb of Raleigh, which could have decreased costs for thousands of residents.^{lxx} Here in Maine, a 2009 request for CON by MaineGeneral to build a new 226-bed hospital in Augusta was denied by DHHS; officials only agreed to let the project move forward if the number of beds was reduced to 192. In 2014, reports surfaced that the new facility was operating at full capacity 26% of the time, and that patients admitted to the hospital were often occupying emergency room beds until beds opened up on other floors.^{lxxi}

Holly Lusk, a health policy advisor to Governor LePage, said in 2015 that, “Repealing CON means repealing the impediment to our state’s health care facilities ability to develop and plan based on efficient market forces. Market forces reward entities that provide excellent products at reasonable prices. CON serves as a barrier to innovation.”^{lxxii}

BARRIERS TO EXPANDING TELEMEDICINE

Telemedicine, the use of electronic communication for the purpose of medical diagnosis, consultation, or treatment, is a growing phenomenon in the United States. For over a decade, consumers around the country have enjoyed the convenience of remote interactions with health care experts who can provide second opinions, write prescriptions, or offer medical advice. Instead of scheduling an office visit and wasting time in the car and waiting room, patients are able to consult their doctors from the comfort of their homes.

Patients who choose telemedicine can significantly cut down on their medical expenses without compromising quality of care. A study published in *Health Affairs* in 2012 found that a telemedicine program available to some Medicare patients generated savings of 19 percent compared to costs for similar inpatients, and frequently had better health outcomes than conventional hospital visits.^{lxxiii} Another study revealed that a home-centered telemedical approach substantially lowered medical costs, reduced hospital admissions, and cut down on the use of emergency departments.^{lxxiv} In 2008, a meta-analysis of 29 reports concluded that telemedicine has a “moderate, positive, and significant effect on clinical outcomes.”^{lxxv}

Telemedicine shows particular promise in caring for elderly patients with chronic conditions, a demographic of particular importance in Maine. In 2013, the *Maine Sunday Telegram* highlighted the need to find innovative ways to support aging residents and delay their admission to nursing homes.^{lxxvi} A study released in 2015 by Wroclaw University in Poland found that, “Telemedicine-based care provides remote health and social care to maintain people’s autonomy and increase their quality of life... Telecare solutions give a new opportunity for diagnosis, treatment, education, and rehabilitation, and make it possible to monitor patients with a number of chronic diseases.”^{lxxvii}

Telemedicine also has the potential to improve access to medical care for rural Maine communities located far from hospitals or clinics. In 2015, the Health Resources and Services Administration wrote that “[telemedicine] brings care to those patients who would forego care because of inconvenient and difficult travel distances and to patients without adequate transportation resources.”^{lxxviii}

Fortunately, lawmakers in Augusta have begun to recognize the promise of telemedicine in offering low-cost, high-quality services to underserved areas and patients with limited mobility. Last year, legislation was passed allowing physicians who lack a medical license in Maine to provide consultative services to Maine residents through telemedicine without needing to acquire a non-resident license through the Maine Board of Licensure in Medicine.

As a result, several hospitals in Maine have established contracts with out-of-state providers for some services, such as acute specialty care. Central Maine Medical Center and Massachusetts General Hospital, for instance, signed a formal agreement last year to use telemedicine to enhance access to specialist consultations.^{lxxix} A similar partnership between MaineHealth and the Dana-Farber Cancer Institute in Boston was recently announced.^{lxxx} However, Maine law prohibits out-of-state physicians from providing telemedical services to Maine residents without the request of a physician, physician assistant, or advanced practice registered nurse licensed in Maine. This caveat severely limits opportunities to practice telemedicine in Maine and stifles meaningful competition among out-of-state providers. “A better approach would be to allow Maine residents to access specialists at facilities like Massachusetts General or Dana Farber directly,” says James Ward, president of Patient Advocates in Gray, Maine. “Competition lowers costs and increases quality. Maine health care needs a major dose of that specific medicine.”

CUMBERSOME MEDICAL LICENSESURE

Maine should pass reciprocity laws that allow physicians who have been practicing for several years in another state and have maintained high standards of quality and professionalism to practice in Maine after notifying the state medical board of their decision. Just as Maine honors driver's licenses issued by other states, it should allow responsible, experienced physicians to practice in Maine without needing to endure a costly, redundant, and slow licensing process.

Reciprocity agreements between states reduce barriers of entry for physicians, expand access to medical care, and help attract doctors to underserved, rural populations while preserving robust public safety standards. The American Action Forum notes that "despite the variation in the cost and time required to obtain a medical license, there is very little variation in the substantive requirements for medical licensing between the states."^{lxxxix} Shirley Svorny, a Professor of Economics at California State University, argues that extensive medical licensing requirements stifle geographic flexibility and competition, while doing little to protect patients against incompetence or malpractice.^{lxxxix}

In passing reciprocity legislation, Maine would join a large and growing number of states that have recognized the absurdity of the state-by-state licensing model. Several other rural states facing physician shortages – including Montana, Idaho, Wyoming, South Dakota, Utah, West Virginia, and Alabama – have joined the Interstate Medical Licensure Compact, which enhances information sharing between member states and allows doctors in member states to apply for an expedited license when seeking to practice in another member state.^{lxxxix} Fourteen additional states – including neighboring New Hampshire and Vermont – have introduced legislation to join the Compact in 2016,^{lxxxix} and the Maine Board of Licensure in Medicine expressed its support in 2015.^{lxxxv}

An article in *American Medical News* published in 2012 describes the expedited licensing process which the Idaho State Board of Medicine adopted about eight years ago. Physicians already licensed in other states need only demonstrate they are board certified, licensed in good standing in another state, have no significant malpractice or disciplinary history, and pass a criminal background check. According to the Board's executive director, Nancy Kerr, expedited licenses can be processed in two to three weeks; by contrast, the Maine Board of Licensure in Medicine takes about 45 to 90 days to process a license.

The concept of interstate medical licensure recognition is widely supported in the medical community. In 2014, the American Medical Association announced its endorsement of a process "designed to facilitate speedier medical licensure...with fewer administrative burdens for physicians...to obtain licenses in multiple states."^{lxxxvi} The Society of Hospital Medicine praised the idea of "creating uniform guidelines, procedures, and standards among the states will help alleviate burden for physicians, as requirements within each state vary widely and require substantial investments in time and resources to obtain multiple licenses."^{lxxxvii}

Maine needs to streamline its medical licensing regulations now more than ever. Physician shortages are commonplace in Maine, and are likely to grow more severe as thousands of previously uninsured Mainers obtain insurance through the Affordable Care Act. In 2010, there were only 45.7 primary care doctors (PCPs) per 100,000 residents of Washington County, about half the national average.^{lxxxviii} Statewide, Maine had nearly 30% fewer PCPs than the national average.^{lxxxix} A recent study found that Maine will need 120 additional PCPs by 2030 merely to maintain the status quo, much less begin to address the unmet need for primary care.^{xc}

PUNISHING SMALL FARMS

Too often, lawmakers in Augusta impose sweeping regulations on agricultural producers without differentiating between large, industrial farms and local, community-based businesses. Betsy Garrold, president of Food for Maine's Future, explains, "We want to have the inspections and regulations be size appropriate. We do not feel that having the same onerous capital investment required for a 3,000-head dairy should apply to someone milking one cow or goat and selling the excess in a face-to-face manner to their friends and neighbors." According to Dr. Michele Pfannenstiel, president and CEO of Dirigo Food Safety, agricultural regulations fail to take into account the relatively modest risk small producers pose compared to larger farms;^{xcv} for instance, any business selling potatoes to grocery stores – regardless of its size or the number of vegetables sold – must comply with similar quality control rules.

Unfortunately, lawmakers in Maine have consistently rejected efforts to reduce the regulatory burden on small farmers. In 2015, legislators defeated a bill – LD 925 – designed to facilitate direct sales between producers and consumers, including goods sold at farmers' markets and products made in home kitchens, by exempting them from licensing and inspection requirements.^{xcvii} Another bill, LD 229, would have allowed dairy farmers who produce fewer than 20 gallons of raw milk per day to operate without a distributor's license as long as the milk products were clearly labeled informing consumers of the lack of government oversight.^{xcviii} Another proposal – LD 709 – would have allowed rabbit producers to sell rabbit products without inspection at the farm on which the rabbits were raised, at farmers' markets, by

delivery to consumers' homes, to locally-owned grocery stores and to locally-owned restaurants.^{xcix}

Heather Retberg, a small food producer in Penobscot, Maine, has said local control of food regulations is "a tool of innovative policy making, experimentation if you will, at the local level that has created space for creativity and local economic growth. Strong local economies lead to resilience."^{xcv}

The Maine Department of Agriculture, Conservation, and Forestry argues that strong oversight and safety requirements are needed to protect the public from contaminated food. Yet, as Bonnie Preston of Blue Hill has noted, "For the five years we've been working on this issue, [regulators] have presented nothing but scare tactics about food safety, without providing a shred of evidence that illness or death has originated from a small Maine farm." Far from endangering public health, small farms actually defend against food-borne diseases by diversifying production and reducing the probability that safety violations at a single farm could endanger thousands of lives. Fedele Bauccio, the CEO of Bon Appetit Management Company, writes that "food safety regulations have served to consolidate production and drive small and mid-sized farmers out of business."^{xcvi}

The agricultural industry has been growing in Maine as demand for local, authentic foods has increased. According to the Department of Agriculture, the total value of Maine agricultural products sold in 2012 exceeded \$763 million, and nearly 1.5 million acres were devoted to farming activities. Of the 8,200 farms in business, 77 percent operated on fewer than 180 acres.^{xcvii}

PUNITIVE ENVIRONMENTAL REGULATIONS

Safeguarding Maine's pristine natural resources for future generations, and enacting sensible environmental protections to achieve that goal, are important. Yet for too long, policymakers have ignored the impact of these regulations on businesses struggling to comply with esoteric and expensive requirements; it is time for them to reject the categorical assumption that all environmental regulations – no matter how stifling to the business community – are inviolate.

There are several areas for improvement. Maine's environmental regulations, for example, frequently go beyond the requirements of federal law, creating additional layers of red tape. For instance, federal law only requires that Best Available Control Technology (BACT) be used to limit pollution on major projects,^{xcviii} while rules issued by the Maine Department of Environmental Protection require that BACT be used on minor projects as well.^{xcix} Similarly, Maine regulations concerning Bisphenol A – a common chemical in plastic – aren't aligned with federal rules. These discrepancies represent additional costs that Maine businesses must absorb.

In Maine, several agencies have jurisdiction over different aspects of environmental regulation. The State Fire Marshal inspects above ground storage tanks; the Department of Health and Human Services regulates drinking water systems; and the Department of Inland Fisheries and Wildlife conducts significant wildlife habitat analyses relevant to permitting applications. Internalizing these responsibilities to the Department of Environmental Protection would help small business acquire the information they need and improve bureaucratic processes by consolidating duties.

Currently, DEP officials have up to 90 days after the discovery of compliance problem to issue a Notice of Violation notifying a business of the need for corrective action. Reducing the timeframe to 30 days would help businesses address harmful or dangerous situations quickly, allowing them to limit penalties. Maine law also establishes \$100 "per day" penalty minimums for certain violations, even when delays were caused by the state; lawmakers should give regulators discretion to reduce penalties for long-term violations.

A final example of common sense regulatory reform is currently being debated in the Maine Legislature. The proposed change would exempt oil discharges of less than ten gallons from reporting standards. The spilling of oil into the environment in any amount is a violation of Maine law and must be brought to the attention of DEP. In January 2016, DEP acknowledged that "every car in the parking lot that has a drop of oil fall from it is required to be reported. Every drop of gasoline that spills when a homeowner fills their lawnmower is required to be reported. This not only does not make sense, but it creates inconsistency in spill report, enforcement, and response."^c As a result, the Maine Department of Environmental Protection receives nearly 3,000 spill calls each year, and field investigators have accrued a significant backlog.

As early as 2006, DEP recommended that the Legislature loosen oil spill reporting requirements for small discharges at facilities which are capable of responsibly containing and remediating the spills. The report emphasized that the change would allow "the Department's limited response staff to focus on larger discharges and discharges in locations where the public health and environmental risks are greater."^{ci}

THE BAN ON SUNDAY HUNTING

Maine has banned hunting on Sundays since 1883. The law, enacted at a time when religious principles had enormous influence over public policy, was meant to encourage Mainers to devote time on Sunday to relaxation and spiritual reflection.

Over the years, as Maine gradually became less religious – and more denominationally diverse – the rationale for the law eroded. Mainers began engaging in a broader set of recreational activities on Sunday, and many even worked. Yet despite our state’s evolution, lawmakers have rejected dozens of bills that would lift the ban, or at least create exceptions for certain species or weapons, or permit the practice on private property or in the unorganized territories.

The refusal of legislators to allow Sunday hunting has hurt our state’s economy and hindered small business growth. Hunting is an important economic activity in Maine, particularly in rural areas where local businesses struggle to attract customers. According to a recent study, hunting expenditures in 2011 in Maine totaled \$203 million and supported 3,664 jobs.^{cii} Of that, 50 percent were trip-related expenses like food, lodging, and transportation. More than \$45 million was spent on guns, ammunition, and equipment. The average trip-related expenditure per hunter was \$565.^{ciii}

According to the National Shooting Sports Foundation, “The benefits of Sunday hunting extend well beyond the sportsmen’s community. An economic impact report has found that the removal of Sunday hunting restrictions would result in an estimated 1,800 new Maine jobs. The report also noted that these jobs would pay more than \$45 million in wages and contribute more than \$133 million in additional economic activity to the state.”

Despite the economic importance of the hunting industry, the number of paid license holders in Maine has decreased by 32,128 in the last five years – 14,777 of which were non-resident licenses. In 2015 alone, Maine lost a total of 9,415 paid license holders.^{civ} A weekend hunting trip to Maine may not be worth the cost when non-residents can go to New Hampshire, Vermont, or New Brunswick, Canada and hunt every day of the trip. While our Sunday hunting ban may not be the only factor behind the alarming decrease in non-resident license sales, it is interesting to note that during the same five year period, New Hampshire recorded a net loss of only 86 paid license holders.

George Smith, who served as the executive director of the Sportsman’s Alliance of Maine, agrees this prohibition hurts us economically: “Our neighboring states of New Hampshire, Vermont, and New York all offer Sunday hunting and steal our hunters, both resident and nonresident, who like to hunt both days of a weekend. I know a very successful Portland lawyer who spends his fall weekends with his wife in New Hampshire, where they both enjoy hunting on Saturday and Sunday. The national hunting magazines have punished and pummeled our state for its lack of Sunday hunting opportunity.”^{cv}

Maine is one of only three states that impose complete bans on Sunday hunting.^{cvi} Many states have never had such restrictions and have experienced no adverse consequences. Repealing this outdated regulation would boost our economy, attract more hunters, expand our freedoms, and allow more Mainers to participate in hunting activities.

BROKEN WORKERS' COMPENSATION

Workers' compensation insurance, introduced in the United States in the early 20th century, is a state-designed program that provides wage replacement and medical benefits to workers who are injured on the job. E.R. Mills, a judge in Florida, described the program as "a very important field of the law, if not the most important. It touches more lives than any other field of the law. It involves the payments of huge sums of money. The welfare of human beings, the success of businesses, and the pocketbooks of consumers are affected daily by it."^{cvii}

In 2014, the Oregon Department of Consumer and Business Services ranked the 50 states with respect to the burdens workers' compensation regulations imposed on businesses. Maine ranked 13th, with a premium rate 16% above the national median.^{cviii}

The Pacific Research Institute notes that "workers compensation insurance requirements are rigid and overly-costly. This insurance system...diminishes economic efficiency, increases operation costs, and creates a disincentive for small businesses to grow and expand their payrolls. The result is a less vibrant small business sector"^{cix}

The Workers' Compensation Coordinating Council, an organization that represents the interests of employers on workers' compensation issues, testified in 2011 that "it is clear that the current workers' compensation system...is heavily regulated," and noted that, "our members who operate in several states inform us that the difficulty of administering claims in Maine is much greater than in any other state."

In 2012, a reform bill was signed into law by Governor LePage that – among other regulatory changes – simplified the formula for calculating maximum benefits, repealed the requirement that benefits be paid during the appeals process, and shortened the amount of time an employee has to notify their employer of an injury from 90 days to 30 days.^{cx} "If there is a dangerous condition at work that is causing people to be injured, it makes sense to have people report that sooner rather than later," said Paul Sighinolfi, executive director of the Maine Workers' Compensation Board.^{cxii}

Policymakers should look closely at the responsibilities and powers of the Workers' Compensation Board to identify areas for improvement and cost reduction. Streamlining monitoring and auditing processes – which have grown more convoluted and intrusive over the last twenty years – would reduce the administrative burdens on businesses. According to a business attorney in Maine who preferred to remain anonymous, speeding up the investigations and decisions process would also save employers money by quickly exposing bogus or fraudulent claims. "The longer a claim lasts, the more it costs, and thus the more leverage the employee has to extract a settlement...This is an area ripe with claims abuse," he said, and suggested that scrutinizing ways to improve and streamline the investigative process would be helpful.

Employees deserve the best possible care when injured. Employers deserve fair and predictable costs and a system that is streamlined, not burdened by inefficiency and excessive regulation.

THE UNFAIR EVICTION PROCESS

Maine's current eviction process is expensive, slow, and duplicative. Landlords seeking to evict tenants for non-payment of rent – by far the most common motivation for eviction – often face weeks of delays, court appearances, and frivolous legal appeals while incurring significant and uncompensated financial losses. The entire process, from the tenant ceasing to pay rent to the successful re-acquisition of the rental property, can last several months. As a result of Maine's convoluted eviction laws, rental unit costs are rising and small apartment owners are being driven out of business.

The current eviction process works like this:

1. Once the tenant has failed to pay rent for seven days, the landlord may deliver an eviction notice, letting the tenant know that the rent must be paid within seven additional days. A landlord must make three good-faith attempts to personally serve the tenant with the notice to quit. If repeated attempts are unsuccessful, the landlord may mail the notice and leave a copy at the unit.
2. On the 15th day, the landlord may go to court and file a summons and complaint to set a date for a court hearing. The tenant must receive the documents – served by a sheriff's deputy – at least seven days before the court date.
3. On the 22nd day, if the tenant doesn't appear at the hearing, the court issues a Writ of Possession, giving the tenant 48 hours to vacate.
4. On the 24th day, the landlord must once again contact law enforcement to forcibly evict the tenant.

This process can be lengthened considerably depending on the court's schedule and the availability of sheriff's deputies. Frivolous appeals and legal obstacles can drag the process out even further. Ken and Deb LaVoie, who own 35 rental units in Waterville, testified to the Legislature in 2010 that “an incorrect date or slight miscalculation” in filing court motions can lead to further delays, as can tenants who deliberately avoid being served court documents. “One such incident...can literally mean the difference between a profit and loss for the entire year.”

Charles Kellenberger, who has been a landlord in Central Maine for 25 years, acknowledges that vulnerable tenants should have legal protection from unscrupulous landlords, but emphasizes that Maine's current laws make eviction for failure to pay rent an expensive and time-consuming undertaking. “When landlords are struggling to evict tenants who aren't paying rent, capital investments don't get made, employees aren't hired, and businesses' already narrow profit margins shrink,” he says.

Sherwood and Laurie Booker, who operate many rental units in Waterville, say they've “accumulated over \$1 million in unpaid rent, damages, and legal fees” since 1993. “We feel that the eviction process is responsible for 50% or more of this amount...95% of our evictions are for nonpayment of rent.”

Policymakers should streamline the eviction process by reducing unjustified appeals, shortening wait times, and requiring tenants to take responsibility for unpaid rent.

LIMITED COMMERCIAL ACTIVITY ON SUNDAYS OR OTHER HOLIDAYS

Maine law prohibits businesses from opening to the public on Sunday except for works of necessity, emergency, or charity, or between the hours of 12 p.m. and 5 p.m. from Thanksgiving to Christmas, during the holiday shopping season. Over the years, however, a litany of exceptions have been passed to allow restaurants, bowling alleys, movie theaters, pharmacies, and many other businesses to stay open on Sunday.

Importantly, car dealerships are not among the exceptions to the Sunday prohibition. Selling a vehicle on Sunday is a Class E crime, punishable by up to six months in jail and a \$1,000 fine per violation. This law is onerous to those working Monday through Friday and only have the weekend to evaluate or purchase a new car, as well as dealerships seeking to broaden narrow profit margins. It hasn't always been this way; according to the *Portland Press Herald*, "Conducting retail business on Sunday had been almost routine behavior for a long time until about 1960," when penalties for doing so were substantially increased.^{cxii}

Blue laws also affect large supermarkets and department stores, which are required to close on Thanksgiving, Easter, and Christmas. In 2013, Fox News reported that Maine was one of only three states in the country to impose such restrictions.^{cxiii} In 2015, testifying on a bill which would have enabled businesses to stay open on holidays, Shelley Doak, executive director of the Maine Grocers & Food Producers Association, said, "The grocery business is fiercely competitive and the current restriction gives smaller store owners a chance to enjoy three brisk sales days; especially for last minute holiday items." One

business owner told her, "The smaller stores have these days to make up for lost sales during the rest of the year."^{cxiv}

In 2015, a proposal – LD 855 – was introduced to relax Sunday closing requirements for stores with fewer than 10,000 square feet of interior customer selling space (for comparison, a typical chain drug store has about 11,000 square feet of selling space), while prohibiting businesses from compelling their employees to work on Sunday. "This bill [is] an opportunity for workers to pick up additional shifts voluntarily if they prefer or choose to work on Sundays. This could be a good opportunity for youth especially. This also provides more convenient access to grocery stores by residents," said Julie Rabinowitz, director of communications and operations at the Maine Department of Labor. Curtis Picard, executive director of the Retail Association of Maine, testified that, "Ultimately, it is the consumers that should justify whether or not a store will open."

State law in Maine also allows municipalities to restrict the sale of wine, malt liquor, or spirits by local referendum, an option that several dozen towns have used to deny businesses the opportunity to operate, abridging the personal freedoms of their residents. In September 2015, organizers of the Great North Music and Arts Festival in Norridgewock were surprised to learn that on-site alcohol consumption was prohibited, and had to cancel one of their events. "Officials in some of the towns say updating the laws would help business, but they have persisted the way they are for decades," reported the *Kennebec Journal*.^{cxv}

UNNECESSARY PROFESSIONAL LICENSING

We all know that physicians and lawyers must obtain a license before plying their trade. Psychologists and dentists must do the same. Few people realize, however, the breadth of government regulation on occupational licenses.

According to a recent study by the Institute for Justice, Maine licenses 39 out of 102 low- to moderate-income professions. These include makeup artists, teachers, funeral attendants, auctioneers, and sign language interpreters, among many others. Those seeking to enter these occupations must, on average, pay \$206 in fees, devote 226 days to training, and pass one exam.

A recent study found that more than 20% of Maine's workforce is licensed, representing more than 100,000 professionals. Nationwide, the proportion of the workforce needing to obtain a license has nearly quintupled since the 1950s as state legislatures around the country have expanded the number of industries under government control.^{cxvi} Until 1985, for example, dietetic technicians were free to work in Maine without a license.^{cxvii}

The argument in favor of licensing always has been that it protects the public from incompetent charlatans. By passing strict entry requirements, proponents argue, the government ensures that workers are well trained and consumers are protected. However, the overwhelming consensus of scholarly research is that – unless imposed with extraordinary parsimony and care – occupational licensing requirements deter people (particularly the poor) from entering the regulated profession, raise prices for goods and services, and do little to enhance public safety.^{cxviii}

A study of occupational licensing policies in every state notes that “the need to license any number

of occupations...defies common sense.” Maine requires plumbers and electricians to be licensed, but not carpenters or painters. Geologists need to be licensed, but not biologists, chemists, and physicists. And Maine is virtually alone in regulating certain jobs. For instance, log scalers – who are responsible for estimating the value of logs – face no employment restrictions in any state except Maine and Idaho. Maine is also one of only three states to license dietetic technicians; applicants must obtain more than two years of training prior to licensure.

Even the Obama administration acknowledges that occupational licensing can have deleterious consequences. In a report released in July 2015, the Department of the Treasury stated: “There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across State lines. Too often, policymakers do not carefully weigh these costs and benefits when making decisions about whether or how to regulate a profession through licensing.”^{cxix}

Licensing requirements are not harmful to everyone. Entrenched industries benefit greatly from keeping new practitioners out of the market and suppressing competition. According to the Concise Encyclopedia of Economics, “it appears that every organized occupational group in America has tried at one time or another to acquire state licensure for its members.”^{cxx} Licensing has more to do with imposing costly and time-consuming obstacles that limit competition than with ensuring competence and protecting public safety.

THE MAINE FAMILY MEDICAL LEAVE ACT

In 1993, the U.S. Congress passed the Family and Medical Leave Act, which entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons.^{cxxi} Though lawmakers' motivations were laudable in trying to protect the jobs of those with serious medical conditions or sick children, family medical leave regulations are often a significant burden on small businesses who face disjointed work schedules, lost productivity, and administrative hurdles as a result.

Many states – including Maine – have enacted expanded family leave laws that contain more generous provisions than the federal law. The Pacific Research Institute, which ranks Maine 43rd in family leave regulations, states that “from a small business owner’s perspective, expanded family leave regulations create additional burdens (due to the size exemption, the impact will be felt more acutely by larger small businesses) including higher employee expenditures and the potential costs and lost productivity created when workers exercise their leave benefits. These higher costs reduce the ability of small businesses to add new employees and grow.”^{cxxii}

According to the National Conference of State Legislatures, the federal Family Medical Leave Act (FMLA) provides up to 12 weeks of unpaid leave during a 12-month period to care for a family member, adopted or foster child, or to attend to the employee’s own serious health condition. The law applies to private employers with 50 or more employees.

STAFFING REGULATIONS IN NURSING FACILITIES

Currently, the State of Maine mandates the following minimum nursing staff-to-resident ratios:

Under the Maine Family Medical Leave Act, lawmakers have expanded beyond the requirements of the federal law and imposed additional regulations on businesses. In Maine, private employers with 15 or more employees, all state employers and local governments with 25 or more employees must provide up to ten weeks of leave every two years. Leave may be taken to care for a child, spouse, parent, sibling, or civil union partner, or to be an organ donor. Maine law extends family medical leave eligibility to more small businesses than federal statute, and allows leave to be taken for the care of a larger pool of relatives.

The Heritage Foundation has exposed numerous examples of unscrupulous employees abusing lax family medical leave requirements to avoid undesirable work, excuse tardiness, and take time off to for unjustified reasons.^{cxxiii} A 2013 business survey found that 69% of respondents said family medical leave laws impose an “undue burden” on their operations and result in “unpredictable staffing levels.”^{cxxiv} In 2014, the National Business Group on Health noted that the administrative requirements of family medical leave laws are burdensome and disruptive.^{cxxv}

Policymakers should strive to achieve balance in family medical leave laws. Employees coping with serious illness in the family should be protected, but the regulatory burden on small business must be reduced and streamlined in order to identify fraud, minimize paperwork requirements, and mitigate financial losses.

On the day shift, one direct-care provider for every five residents;

On the evening shift, one direct-care provider for every ten residents; and

On the night shift, one direct-care provider for every 15 residents

Strict staffing requirements don't adequately reflect the dynamic needs of residents, according to the Maine Health Care Association, and can cost businesses millions of dollars every year to comply with. During the evening shift, for instance, which runs from 4 p.m. until midnight, not nearly as many nurses are needed between 10 p.m. and midnight as during dinnertime. Yet the staffing requirement for the entire shift is the same. Similarly, far fewer nurses are needed during the beginning of the night shift – between midnight and 4 a.m., when most residents are

asleep – as the end of the shift, when residents begin to wake up. Employers are not allowed to adapt to these simple nuances, leading to unnecessary overstaffing and additional costs.

Instead of imposing arbitrary requirements that bare little relation to the needs of residents, the government should demand that staffing levels be sufficient to provide adequate, responsible care and assistance. Interestingly, the Department of Health and Human Services already requires that “licensed nurse coverage...be provided according to the needs of the residents.”

USE TAX FOR FREE EMPLOYEE MEALS

Loren Goodridge, who operates 22 Subway restaurants in Maine, used to offer each of his employees a free meal – a sandwich and a fountain drink – during every shift, valued at about \$5 apiece. “To an entry-level employee, that adds up to a car payment or part of the rent,” he said. But when the Maine Revenue Service

audited his records, he was told he owed thousands of dollars in back taxes based on the value of the ingredients in the meals. Continuing his free meal policy would have meant higher taxes and a record-keeping nightmare, so Mr. Goodridge ended this employee benefit.

STATE INCOME TAX ELIGIBILITY THRESHOLDS

In 2004, lawmakers decided to tax the Maine-based income of non-residents who work more than 12 days in the state and earn more than \$3,000. Prior to 2004, Maine only collected income taxes on non-residents who worked more than 20 days and earned more than \$6,000 in the state.

This policy change has reinforced the impression that Maine is hostile to business and has motivated companies to more closely monitor their employees' trips to Maine.

Many companies – such as Unum, a large life insurance company with a branch in Portland – bring large numbers of their employees to Maine from offices around the country for training, management oversight, meetings, and

conferences. Out-of-state employees contribute to Maine's economy by spending money and paying taxes at local restaurants, hotels, and shops. Many return to vacation in the state, and some even decide to move to Maine. Due to this new regulation, businesses now prefer to host professional meetings in states where no such taxes are imposed.

ⁱ https://www.pacificresearch.org/fileadmin/images/Studies_2015/SmBusinessIndexUpdatedVersion20160624/americas-top-states-for-business.html

ⁱⁱⁱ <https://fas.org/sgp/crs/misc/R43056.pdf>

^{iv} <https://cei.org/blog/2014-ends-78978-page-federal-register-3541-rules-and-regulations>

^v <http://www.forbes.com/sites/georgeleef/2015/02/06/thanks-epa-your-new-navigable-waters-rule-strengthens-the-case-against-administrative-law/2/#45f7789b133f>

^{vi} <http://bangordailynews.com/2014/07/02/opinion/contributors/epas-new-water-rule-could-hurt-maine-farmers-congress-needs-to-ditch-it/>

^{vii} <http://thinkprogress.org/climate/2016/01/14/3738100/farmers-support-clean-water-rule/>

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http://www.rollcall.com/news/expanded_clean_water_act_rules_hurt_small_business_commentary-233793-1.html
ix *Ibid.*
x <http://www.environmentalleader.com/2015/10/12/clean-water-rule-on-hold-nationwide/>
xi <http://kff.org/other/state-indicator/firms-offering-coverage-by-size/>
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