

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1213, L.D. 1713, Bill, "An Act Relating to Compensatory and Punitive Damages Under the Maine Human Rights Act"

Amend the bill in section 1 in paragraph B by striking out all of subparagraph (7) (page 1, lines 44 to 52 and page 2, lines 1 to 5 in L.D.) and inserting in its place the following:

'(7) An order to pay to the victim of unlawful discrimination, other than employment discrimination in the case of a respondent who has more than 14 employees, or, if the commission brings action on behalf of the victim, an order to pay to the victim, the commission or both, civil penal damages not in excess of \$10,000 in the case of the first order under this Act against the respondent, not in excess of \$25,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$50,000 in the case of a 3rd or subsequent order against the respondent arising under the same subchapter of this Act, except that the total amount of civil penal damages awarded in any action filed under this Act may not exceed the limits contained in this subparagraph; and'

Further amend the bill in section 1 in paragraph B in subparagraph (8) in the first paragraph in first line (page 2, line 7 in L.D.) by inserting after the following: "intentional" the following: 'employment'

Further amend the bill in section 1 in paragraph B in subparagraph (8) in the first paragraph in the last line (page 2, line 9 in L.D.) by striking out the following: "subparagraph:" and inserting in its place the following: 'subparagraph.'

COMMITTEE AMENDMENT

2 Further amend the bill in section 1 in paragraph B in
subparagraph (8) in division (a) in the 5th line (page 2, line 15
4 in L.D.) by striking out the following: "4602" and inserting in
its place the following: '4575'

6
8 Further amend the bill in section 1 in paragraph B in
subparagraph (8) in division (e) by striking out all of
subdivision (i) (page 3, lines 4 to 7 in L.D.)

10
12 Further amend the bill in section 1 in paragraph B in
subparagraph (8) in division (e) by renumbering the subdivisions
to read consecutively.

14
16 Further amend the bill in section 1 in paragraph B in
subparagraph (8) in division (h) in the last line (page 3, line
42 in L.D.) by striking out the following: "impact; and" and
18 inserting in its place the following: 'impact.'

20 Further amend the bill in section 1 in paragraph B in
subparagraph (8) by adding at the end the following:

22
24 '(i) Punitive damages may not be included in a
judgment or award against a governmental entity, as
26 defined in Title 14, section 8102, subsection 2, or
against an employee of a governmental entity based on a
28 claim that arises out of an act or omission occurring
within the course or scope of that employee's
employment; and'

30
32 Further amend the bill by inserting before the summary the
following:

34 'Sec. 2. 5 MRSA §4622, sub-§1, as amended by PL 1995, c. 393,
§30, is further amended to read:

36
38 1. Limitation. No-attorneys' Attorney's fees under section
4614 and no civil penal damages or compensatory and punitive
40 damages under section 4613 may not be awarded to a plaintiff in a
civil action under this Act unless the plaintiff alleges and
42 establishes that, prior to the filing of the civil action, the
plaintiff first filed a complaint with the commission and the
commission either:

44 A. Dismissed the case under section 4612, subsection 2;

46 B. Failed, within 90 days after finding reasonable grounds
48 to believe that unlawful discrimination occurred, to enter
into a conciliation agreement to which the plaintiff was a
50 party; or

2 C. Issued a right-to-sue letter under section 4612,
3 subsection 6 and the action was brought by the aggrieved
4 person not more than 2 years after the act of unlawful
5 discrimination of which the complaint was made as provided
6 in section 4613, subsection 2, paragraph C.

8 This subsection does not apply to or limit any remedies for civil
9 actions filed under subchapter V if one or more additional causes
10 of action are alleged in the same civil action that do not
11 require exhaustion of administrative remedies.'

14 SUMMARY

16 This amendment amends the bill to be consistent with the
17 Federal Civil Rights Act of 1991 and Title I of the Americans
18 with Disabilities Act of 1990 with regard to compensatory and
19 punitive damages for unlawful discrimination in employment.

22 This amendment retains the existing authorization for civil
23 penal damages in all cases of unlawful discrimination in housing,
24 credit, education and public accommodations. It retains the same
25 authorization for public entities and employers with fewer than
26 15 employees.

28 This amendment revises the new compensatory and punitive
29 damages provisions to apply to only intentional employment
30 discrimination, but will not be available against employers with
31 fewer than 15 employees. This is consistent with the federal law.

34 The Maine Tort Claims Act prohibits the award of punitive
35 damages against a governmental entity. This amendment makes the
36 Human Rights Act consistent with the Maine Tort Claims Act with
37 regard to intentional employment discrimination. It also
38 prohibits punitive damages against an employee of a governmental
entity when acting within the course or scope of the employment.

40 This amendment does not authorize the award of compensatory
41 and punitive damages to a plaintiff who sued the employer in
42 court directly without first pursuing a remedy through the Maine
43 Human Rights Commission.

44 This amendment also corrects punctuation in the original
46 bill.