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SPEAKER OF THE HOUSE

Tuesday, April 25th, 2023

Testimony of Speaker Rachel Talbot Ross presenting
LD 1423, An Act to Increase the Limits on Awards for Compensatory and Punitive Damages Under the Maine Human Rights Act
Before the Joint Select Committee on the Judiciary

Senator Carney, Representative Moonen and esteemed members of the Joint Standing Committee on Judiciary, I am Rachel Talbot Ross. I represent House District 118 which is the Portland peninsula and I also have the distinct honor of serving as the Maine Speaker of the House. I am here today to introduce **LD 1423, An Act to Increase the Limits on Awards for Compensatory and Punitive Damages Under the Maine Human Rights Act.**

As the members of the Committee likely are aware, there are several different components to awards for employment discrimination under the Maine Human Rights Act. In addition to reinstatement, back pay, interest, and attorneys' fees, the Act provides for compensatory damages for future financial losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonfinancial losses. The Act further provides for awards of punitive damages. Those damages deter employers from violating the Act and discriminating against their employees.

Unlike back pay, which is uncapped, the statute caps compensatory and punitive damage awards to employees based upon the size of the employer. When compensatory and punitive damages were added to the Maine Human Rights Act in 1991, Maine initially capped such damages at \$50,000 for employers with 15-100 employees, \$100,000 for employers with 101-200 employees, \$200,000 for employers with 201-500 employees, and \$300,000 for employers with over 500 employees. In 1997, the Legislature voted to increase the caps for compensatory and punitive damages from \$200,000 to \$300,000 for employers with 201-500 employees and from \$300,000 to \$500,000 for employers with over 500 employees.

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

Thus, since their enactment in 1991, the caps on compensatory and punitive damages on smaller employers with 15-100 and 101-200 employees never have been increased. And the current caps on larger employers have not been increased in 25 years.

When adjusted for inflation using the U.S. Bureau of Labor Statistics inflation calculator, this is what the caps would look like today:

January 1997	Today
\$50,000 (15-100 employees)	\$93,655.56
\$100,000 (101-200 employees)	\$187,311.13
\$300,000 (201-500 employees)	\$561,933.38
\$500,000 (501+ employees)	\$936,555.63

LD 1423 essentially seeks to increase the caps to adjust for the last 25 years of inflation. In effect, LD 1423 pushes each group up one step, while capping compensatory damages for the largest employers, those with 501 or more employees, at \$1 million. Maine currently has 77 employers with 501 or more employees.

As my co-sponsors Senator Dusen, who formerly was in charge of conciliation at the Maine Human Rights Commission, or Senator Carney, who formerly litigated employment discrimination cases can tell you, most complaints of discrimination are settled without litigation. They are typically resolved after a finding of reasonable grounds by the Maine Human Rights Commission or after denial of summary judgment by the state Superior Court or federal District Court. The settlement value of cases is dependent in no small measure upon the employer's potential exposure, including for compensatory and punitive damages. The settlement value of cases has effectively been eroded by 25 years of inflation. Increasing the caps will ensure that victims of discrimination are fairly compensated and will serve to deter employers from discriminating against other employees.

When cases do not settle and go to trial, a rarity these days because of the use of alternative dispute resolution, juries are **not** made aware of the statutory caps. That means that in a number of instances when juries believed they were compensating victims of discrimination for their loss of enjoyment of life and to deter employer misconduct, including malicious, reckless and intentional conduct, some victims never received the full measure of damages the juries thought they

were entitled to receive. Rather, the judges were compelled to reduce the award to comply with the caps.

The following case demonstrates how victims of discrimination can be impacted by these caps. In that case, an employee sued his employer, a regional airline located in Portland, claiming that the employer had discriminated against him due to his sexual orientation. A unanimous jury agreed and found that for several years the employer had intentionally discriminated against the employee based on his sexual orientation. The jury found that the victim had suffered extreme emotional distress. The jury valued that claim at \$500,000. It also found that the employer had acted with malice and reckless disregard of the employee's rights. The jury awarded damages of an additional \$500,000 for that distinct claim. The jury's award totaled \$1,047,000. However, due to the caps limiting the compensatory damages to \$500,000, the total compensatory damages were reduced by half a million dollars. In other words, the jury's will and findings were essentially disregarded due to the arbitrary caps.

Maine is a regional outlier when it comes to statutory caps in cases alleging illegal discrimination. Massachusetts, New Hampshire, and Vermont do not place caps on punitive damages. Similarly, Rhode Island does not cap punitive damages except in instances where the employer is the state or its municipalities. LD 1423 can bring Maine into line with the laws of other New England states.

In addition to inflation eroding the value of capped settlements, during the 25 years that the damage caps have remained stagnant, corporate profits, especially among larger employers, have increased exponentially. For example, in 2005, Walmart made \$300,000 every 37 seconds. Today, it makes the same amount in 18 seconds, or less than half the time, yet its liability for compensatory and punitive damages remains unchanged, even without regard to inflation.

Indeed, as things stand now, the difference in revenues between smaller and larger employers is enormous, yet larger employers potentially pay far less as a percentage of their annual revenues than smaller employers in compensatory and punitive damages.

Employer Size	Damage Cap	Avg. Revenue	Damages as Percentage of Average Revenue
10-19	50,000	2.164 Million	2%
20-100	50,000	7.124 Million	0.7%
100-500	100,000-300,000	40.775 Million	0.2-0.7%

Finally, our legal system already has mechanisms in place to protect employers from abuse, particularly with regard to punitive damages. To obtain punitive damages, employees must show actual malice or reckless indifference to the law by their employer. *Kolstad v. American Dental Association*, 527 U.S. 526 (1999). Moreover, judges can use the doctrine of remittitur to reduce, or threaten to reduce, awards for punitive damages. As a result of the Supreme Court's decision in *BMW of North America v. Gore*, 517 U.S. 559 (1996), there are guideposts in place to prevent the award of excessive amounts in punitive damages.

I thank you for your time and attention this afternoon and ask for your support of LD 1423. While I am happy to answer any questions you might have, you will be hearing from experts in this field as well as from persons whose lives were changed due to discriminatory behavior.