

# **Support SB313 civil actions -damages.pdf**

Uploaded by: Linnie Girdner

Position: FAV

Members of the Judicial Proceedings Committee,

I am a resident of District 21 and a member of Showing Up for Racial Justice Annapolis and Anne Arundel County. I am a white Christian, an anthropologist and an antiracist-informed therapist. This background has helped me see how race and gender inequities are built into many institutional systems and how and why to address these.

I am requesting that you support SB0313 Civil Actions - Damages - Use of Race, Ethnicity, and Gender Data which attempts to ensure fair compensation in civil action lawsuits by prohibiting calculating reduced damages based on race, ethnicity, or gender.

Historically, civil action damages are calculated based on a person's predicted future earnings. Because of the long history of racism and discrimination, women and People of Color are expected to earn less than white men in their lifetime and are awarded significantly less money.

There are at least three problems with this. First, it devalues the lives of women and People of Color. It doesn't take into account the decrease in discrimination expected over a person's lifetime, instead it perpetuates it by relying on past data. One 2016 analysis found that a white man could receive almost twice as much as their Black female counterpart for the same claim ([Freeman](#)).

Second, because women and People of Color are expected to earn less in civil damages, lawyers who rely on a contingency fee have less incentive to take on their case in the first place ([Freeman](#)).

Finally, it perpetuates systemic inequality by incentivizing companies to do bad things in marginalized communities. "If race-based tables are used to estimate liability, there is a financial incentive to locate the facility among residents who would likely be awarded lower damages." ([Avraham](#); [Schwab](#)) For example, if a company disposes hazardous materials in a Black community they can expect to pay less in damages than if they did the same practice in a white community.

Maryland would not be the first to pass a bill barring the practice of determining a person's worth based on their race or gender. California passed similar legislation in 2019.

For these reasons I am strongly encouraging you to vote **in SUPPORT of SB0313**.

Thank you for your time, service, and consideration.

Sincerely,

Linda K. Girdner  
941 Fall Ridge Way  
Gambrills, MD 21054

**SB0313\_Damages\_Race\_Ethnicity\_Gender\_MLC\_FWA.pdf**

Uploaded by: Cecilia Plante

Position: FWA



**TESTIMONY FOR SB0313**  
**Civil Actions - Damages - Use of Race, Ethnicity, and Gender Data**

**Bill Sponsor:** Senator Watson

**Committee:** Judicial Proceedings

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Cecilia Plante, co-chair

**Position:** FAVORABLE WITH AMENDMENTS

I am submitting this testimony in favor of SB0313 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

Our members think this is simple. The calculation of damages for a loss of earnings resulting from personal injury or wrongful death, should not be reduced simply because of a person's race, ethnicity, or gender. The fact that we need to legislate this makes the issue of implicit bias training all the important.

We support this bill, but are concerned that there is no measure that will allow a recipient know that they have had their damages unlawfully reduced, and no recourse. We respectfully ask that there be a standard, or a standard range, against which the damages that are awarded that could be measured to evaluate whether a recipient has been harmed. We also ask that a remedy, perhaps the difference between the standard, or the midpoint of the standard range, and the damages awarded be included. We recommend a **FAVORABLE WITH AMENDMENTS** report in committee.

**SB 313 APCIA FWA Civil Use of Gender Race Ethnic**

Uploaded by: Nancy Egan

Position: FWA



**Testimony of**  
**American Property Casualty Insurance Association (APCIA)**  
**Senate Judicial Proceedings Committee**  
**Senate Bill 313 Civil Actions – Damages – Use of Race, Ethnicity, and**  
**Gender Data**  
**February 9, 2022**

**Support with Amendment**

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. APCIA is a national trade organization and represents nearly 60 percent of the U.S. property casualty insurance market. APCIA respectfully supports with amendment Senate Bill 313.

While APCIA appreciates the intent of HB 244, APCIA is always concerned about the unintended consequences of completely barring the use of well-established measurements in calculating a lost wage. We oppose the idea that if such characteristics are deemed inappropriate, they are nonetheless being preserved in this bill if it will be advantageous to an overall outcome that is larger. Either the characteristics are inappropriate, or they are not. In addition, it is not clear how this will be implemented in making these determinations.

As drafted, this proposed prohibition could have an inflationary and inequitable impact on lost earnings awards. We have proposed an amendment to the language that would focus on the “calculation” of lost earnings.

To address the equitable intent of the legislation, the APCIA proposes that the language be amended as follows:

**STRIKE LINES 15-17**

**INSERT :**

**RACE, ETHNICITY AND GENDER MAY NOT BE CONSIDERED IN A CALCULATION OF DAMAGES FOR LOSS OF EARNINGS RESULTING FROM PERSONAL INJURY OR WRONGFUL DEATH**

APCIA believes that language will reduce the potential inflationary impact of the proposal and correct the differential treatment on the very individuals that the legislation is attempting to address.

We appreciate the opportunity to comment and request an amendment and we look forward to working with the sponsor. For all these reasons, the APCIA urges the Committee to consider this amendment to Senate Bill 313.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

[Nancy.egan@APCIA.org](mailto:Nancy.egan@APCIA.org) Cell: 443-841-4174

# **SB 313 - MSBA Support with Amendment Letter (2022.**

Uploaded by: Shaoli Katana

Position: FWA

## MEMORANDUM

To: Members of the Senate Judicial Proceedings Committee

From: Maryland State Bar Association (MSBA)  
Shaoli Katana, Esq., Director

Subject: Senate Bill 313 – Civil Actions – Damages – Use of Race, Ethnicity, and Gender Data

Date: February 7, 2022

Position: **Support with Amendment**

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The Maryland State Bar Association (MSBA) respectfully Supports with Amendment **Senate Bill 313 – Civil Actions – Damages – Use of Race, Ethnicity, and Gender Data**. Senate Bill 313 prohibits a calculation of damages for loss of earnings resulting from personal injury or wrongful death from being reduced based on race, ethnicity, or gender; and applying the Act prospectively.

MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

While MSBA supports the concept of correcting differences in plaintiffs' awards based on race, ethnicity, and gender, it is unclear from the language of SB 313 if that is the specific intent and how the correction will be achieved.

As drafted, SB 313 does not state whether it is trying to move some plaintiffs to a higher average while keeping other plaintiffs, whose awards have typically been greater, at the same average, or whether the bill also proposes to move plaintiffs whose awards have typically been greater to a lower amount.

MSBA recommends that the operative language in the bill be amended to the following:



***Race, ethnicity, and gender may not be considered in a calculation of damages for loss of earnings resulting from personal injury or wrongful death.***

The intention of MSBA's amendment is that demographic or other aggregate data on life expectancy or earnings levels that segments people by gender, race, or ethnicity should not be admitted into evidence or considered. Only evidence based on overall averages should be considered. Under MSBA's proposed amendment, plaintiffs of certain categories whose awards have typically been less due to such considerations will be higher, and plaintiffs of other categories whose awards have typically been greater due to such considerations will be lower.

MSBA believes that such an approach will allow for equal justice regardless of the accidents of birth that are race, gender, and ethnicity, while minimizing the aggregate increase in economic damages judgments issued by Maryland courts in personal injury and wrongful death actions. This latter objective is important to limit increases in insurance premiums and other consequences that would arise from a substantial aggregate increase in such judgment amounts.

For the reasons stated, MSBA **Supports with Amendment SB 313.**

For additional information, please feel free to contact Shaoli Katana at MSBA at [shaoli@msba.org](mailto:shaoli@msba.org).