



MARYLAND DEFENSE COUNSEL, INC.

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House Judiciary Committee

HB 244 – Civil Actions – Damages – Use of Race, Ethnicity and Gender Data

Position: Favorable with Amendments

February 2, 2022

The Maryland Defense Counsel (MDC) is an organization of trial lawyers who represent a broad range of corporate, institutional, and individual defendants, including many of the state's health care providers and institutions.

HB 244 speaks to the collection and stratification of data concerning life expectancy, work life expectancy, and earnings. This data is collected and published by the United States government.

Attached is the Bureau of Labor Statistics (BLS) Usual Weekly Earnings of Wage and Salary Workers Fourth Quarter 2021. Table 2 of that report shows the effect of aggregating or disaggregating earnings data by race, ethnicity, or sex. In current dollars in the last quarter of 2021, the median of all workers over the age of 16 ("Total") earned \$1,010 weekly. Thus, when normed for all adult members of the workforce, the weekly median wage is \$1,010. When normed by gender, however, men had a median of \$1,103, and women had a median of \$930. *Id.*

The BLS further disaggregates (that is, norms) this data by "Race, Hispanic or Latino Ethnicity, and Sex." *Id.* Asians had the highest median, followed by White, Black or African American, and Hispanic or Latino ethnicity. *Id.* All groups had below average incomes except for Asian Men, Asian Women, and White Men. *Id.*

HB 244 states, "A CALCULATION OF DAMAGES FOR LOSS OF EARNINGS RESULTING FROM PERSONAL INJURY OR WRONGFUL DEATH MAY NOT BE REDUCED BASED ON RACE, ETHNICITY, OR GENDER." It is a reasonable use of available data to say that all litigants are treated fairly when loss of earnings data is not normed for race, ethnicity, or gender. As drafted, however, HB 244 does not do that.

In order to apply normative data without regard to race, ethnicity, or gender, it is necessary to apply the same normative scale to everyone. It makes no sense and is not fair to all litigants to say that race, ethnicity, gender norming may not be applied to those whose norm is below average, but may be applied to norms that are above average. A normative scale cannot be valid for those who are above average but invalid for those who are below average.

Therefore, MDC supports HB 244 if amended to state: A CALCULATION OF DAMAGES FOR LOSS OF EARNINGS RESULTING FROM PERSONAL INJURY OR WRONGFUL DEATH MAY NOT BE ~~REDUCED~~ BASED ON RACE, ETHNICITY, OR GENDER. (On page 1, in line 16, strike "REDUCED".)

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