



HB 244/ SB 313
Civil Actions – Damages – Use of Race, Ethnicity, and Gender Data
FAVORABLE

Maryland Law authorizes a person who suffers a loss or harm to that person or that person's property, from an unlawful act or omission of another to recover monetary compensation, known as damages, including lost wages.

HB 244/ SB 313 would prohibit the measure and calculation of past, present, or future damages for lost earnings or impaired earning capacity resulting from personal injury or wrongful death from being reduced based on race, ethnicity, or gender.

The principles of equal protection and due process are fundamental to our democracy and the concept of civil liberty. However, in tort actions around the state and country, race, ethnicity, and gender are routinely used in calculating damage awards that are meant to provide restitution to victims. For example, since women in America earn lower wages, on average, than men, the damages awarded to women are substantially lower than those received by men.

Nearly one-half of economists surveyed by the National Association of Forensic Economics said they consider race, and 92 percent consider gender, when projecting earning potential for an injured person, including children¹. As such, defendants in tort litigation argue to reduce the wage loss claim of women and minorities simply because of their gender, race, or ethnicity.

Using race and gender-based Bureau of Labor Statistics' tables can, by some estimates, under-value women and minorities by hundreds of thousands of dollars, including children who have not yet had the opportunity to work or identify career options. Specifically, these practices greatly disadvantage children of color, who are more likely to be impacted by environmental hazards created by the industrial facilities and factories located in low-income communities.

The consequence of this bias—to use averages that represent generations of discriminatory practices—is to perpetuate systemic inequalities. These practices disproportionately injure women and minority individuals by depriving them of fair compensation.

The civil justice system is grounded in principles of equal protection and due process. Satisfaction of those principles requires fair compensation for all litigants where their recovery is not determined by gender, race, or ethnicity.

MAJ Respectfully urges a Favorable Report

¹ "A 2009 Survey of Forensic Economists: Their Methods, Estimates, and Perspectives" Journal of Forensic Economics (2009) 21 (1): 5–34. <https://doi.org/10.5085/0898-5510-21.1.5>