

MEMORANDUM

To: Members of the House Judiciary Committee

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

Subject: House Bill 244 – Civil Actions – Damages – Use of Race, Ethnicity, and Gender Data

Date: January 31, 2022

Position: **Support with Amendment**

The Maryland State Bar Association (MSBA) respectfully Supports with Amendment **House Bill 244 – Civil Actions – Damages – Use of Race, Ethnicity, and Gender Data**. House Bill 244 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 HB 244 if that is the specific intent and how the correction will be achieved.

As drafted, HB 244 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 HB 244.**

For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.