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SB-41 Civil actions: damages. (2019-2020)

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Senate Bill No. 41

CHAPTER 136

An act to add Section 3361 to the Civil Code, relating to damages.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 41, Hertzberg. Civil actions: damages.

Existing 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, from the person in fault. Existing law specifies the measure of damages as the amount which will compensate for the loss or harm, whether anticipated or not, and requires the damages awarded to be reasonable.

This bill would prohibit the estimation, measure, or 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.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

- (a) The principals of equal protection and due process are fundamental to our democracy and the concept of civil liberty.
- (b) California has been a pioneer in civil rights, leading the way in prohibiting discrimination on the basis of race, ethnicity, gender, and other protected categories.
- (c) 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.
- (d) 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 children. Future lost earning potential is a significant component of the damages awarded in tort actions.
- (e) To determine projected lost earning potential, court experts typically rely on the Bureau of Labor Statistics' Current Population Survey. The results are a reflection of gender pay gaps and workforce discrimination, and they fail to account for possible progress or individual achievement.

(f) 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.

(g) Using race and gender-based 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.

(h) Any generalized reduction of civil damages using statistical tables alone, based on a plaintiff's membership in a protected class identified in Section 51 of the Civil Code, is counter to the public policy of the State of California.

(i) This act shall not be construed to explicitly permit the generalized reduction of damages for lost earnings or impaired earnings capacity based on protected classifications not identified in the Bureau of Labor Statistics' Current Population Survey unless otherwise permitted by existing law.

SEC. 2. Section 3361 is added to the Civil Code, to read:

3361. Estimations, measures, or calculations of past, present, or future damages for lost earnings or impaired earning capacity resulting from personal injury or wrongful death shall not be reduced based on race, ethnicity, or gender.