



**DEPARTMENT OF JUSTICE**  
ATTORNEY GENERAL'S OFFICE

**MEMORANDUM**

DATE: February 12, 2018

TO: Honorable Jeff Barker, Chair  
House Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 4008 – Preventing Discriminatory Damage Awards

This testimony is presented in support of HB 4008.

**BACKGROUND**

In some civil cases, particularly tort cases, statistical assumptions about the future academic achievement or earning potential of a particular race or ethnicity have exposed patterns of inequality in damages awards. In the types of civil cases where loss of future earning potential is available – such as personal injury cases – the calculation tools are chosen and used by the parties as they present evidence and expert testimony on the value of that loss. Sometimes an expert witness economist or actuary will offer evidence of statistical models concerning limited economic future wages available to plaintiff because of factors stereotypically associated with their race or ethnicity. Oregon's uniform jury instructions do not take race into explicit account, but most actuarial tables do break out life, wage, and worklife expectancies by gender, race, and at times, health habits or disability statuses. Actuarial and economic data that makes up the tables used by many litigants today reflect decades-old discriminatory behavior.

**CONCEPT**

HB 4008 attempts to fix this inequity by seeking to limit the consideration of a plaintiff's race or ethnicity in determining their compensation in civil suits. It does so by making future earnings calculations based on the plaintiff's race or ethnicity inadmissible in civil actions. Making the evidence inadmissible should help exclude tainted expert testimony based on plaintiff's race and ethnicity and give the fact finder clearer rules for managing the admission of this type of evidence. HB 4008 also requires a court to instruct the jury that they may not consider the race or ethnicity of the plaintiff in determining whether to award damages for projected future earnings or the amount of such damages. The passage of this measure will make Oregon the first state to prohibit the use of race-based data in personal damages awards.

**Contact:** Aaron Knott, Legislative Director, 503-378-6002, [aaron.d.knott@doj.state.or.us](mailto:aaron.d.knott@doj.state.or.us)