

HB 4008 A STAFF MEASURE SUMMARY

Carrier: Sen. Gelser

Senate Committee On Judiciary

Action Date: 02/27/18

Action: Do pass the A-Eng bill.

Vote: 7-0-0-0

Yeas: 7 - Bentz, Dembrow, Gelser, Linthicum, Prozanski, Thatcher, Wagner

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Channa Newell, Counsel

WHAT THE MEASURE DOES:

Specifies that calculations of projected future earnings of plaintiff that take race or ethnicity of plaintiff into account are inadmissible in civil action. Provides instructions for jury on prohibition on considering race or ethnicity in determining damages.

ISSUES DISCUSSED:

- Tables used to calculate work potential of children include likelihood of education and work history
- Tables may use historical data based on race
- Federal effort in 2016 to issue guidance to forensic economists on use of racial data
- Use of racial calculations not explicit in Oregon, but may happen
- Measure is first statutory prohibition on use of racial or ethnic data in nation
- Constitutional analysis did not raise concerns with measure's impact

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In a civil lawsuit, the plaintiff may be awarded monetary damages in an effort to make the plaintiff whole or to return the plaintiff to a position as if the injury had not occurred. Damages can include economic damages, which are "objectively verifiable monetary losses including but not limited to....loss of income and past and future impairment of earning capacity." ORS 31.710(2)(a). In many personal injury cases, a plaintiff's future earning potential must be analyzed in order to determine an appropriate level of award to compensate for the injury and its impact on the plaintiff's future. The Oregon Court of Appeals has suggested that, "...generally, "objectively verifiable" monetary losses suggests that there is monetary loss in an amount that is capable of confirmation by reference to empirical facts." DeVaux v Presby, 136 Or App 456, 462 (1995). Courts may utilize tools and studies to assist with determining future impairment of earning capacity. Tools include the U.S. Department of Labor lifetime earnings studies, U.S. Census Bureau statistics, and actuarial tables with mortality and work-life expectancy statistics. Many of these tools can sort data by race, ethnicity, and gender.

House Bill 4008-A prohibits the use of racial or ethnicity data in the calculation of projected future earning potential in civil actions.