

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3594

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 2, 2021

This bill, as amended, provides that in any civil action arising from a personal injury or wrongful death, civil rights violation, employment violation, or other substantially similar harm, any estimations, measures, or calculations of past, present, or future damages for lost earnings or impaired earning capacity shall not be reduced because of any class, trait, or characteristic protected under the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) (LAD); this would include such considerations as race, ethnicity, gender, affectional or sexual orientation, and other classes, traits, or characteristics defined by the LAD in section 5 of P.L.1945, c.169 (C.10:5-5). The bill further provides that in any such civil action, any reduction of damages based upon statistical tables alone would be deemed to be against the public policy of this State, unless agreed to by all parties in the civil action.

The bill would take effect immediately, and would apply prospectively to only civil actions commenced on or after the effective date.

The bill as introduced was based on a California enactment, Chapter 136 of 2019, codified as California Civil Code sec. 3361, which provided for no reductions in calculations of lost earnings or impaired earning capacity based on race, ethnicity, or gender. As amended, the bill now incorporates a broader array of classes, traits, and characteristic protected under the LAD for which no reductions in calculations would occur.

The committee amendments to the bill:

- expand its scope to include the calculations of damages in civil actions arising from a civil rights violation, employment violation, or other substantially similar harm;
- incorporate a broader array of classes, traits, and characteristics that are protected under the LAD, as described in the statement above, for which no reductions in the calculations of lost earnings or impaired earning capacity would occur;
- provide that if a reduction of damages was based upon statistical tables alone then such reduction would not be deemed to

be against the public policy of this State when agreed to by all parties in the civil action;

- make the bill apply prospectively only to civil actions commenced on or after the bill's immediate effective date; and

- update the synopsis of the bill to more accurately reflect the bill's provisions based upon the changes made by the amendments.