

114TH CONGRESS
2D SESSION

S. 3489

To prohibit a court from awarding damages based on race, ethnicity, gender, religion, or actual or perceived sexual orientation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2016

Mr. BOOKER (for himself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit a court from awarding damages based on race, ethnicity, gender, religion, or actual or perceived sexual orientation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Calculations in
5 Civil Damages Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “future earnings table” includes
9 any table or compilation of economic data used to
10 determine—

1 (A) how many years an individual would
2 have worked in the future; or

3 (B) the average wage an individual would
4 have earned in the future; and

5 (2) the term “protected class” means a group
6 of individuals sharing a common characteristic or
7 identity who are legally protected against discrimina-
8 tion.

9 **SEC. 3. CALCULATIONS OF DAMAGES.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, no court of the United States may award dam-
12 ages to a plaintiff in a civil action using a calculation for
13 the projected future earning potential of that plaintiff that
14 takes into account the race, ethnicity, gender, religion, or
15 actual or perceived sexual orientation of the plaintiff.

16 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to deny a court from ordering dam-
18 ages based on the fact that the plaintiff is a member of
19 a protected class or for the purposes of Federal civil rights
20 laws.

21 **SEC. 4. INCLUSIVE FUTURE EARNINGS TABLES.**

22 Not later than 180 days after the date of enactment
23 of this Act—

24 (1) the Secretary of Labor shall develop guid-
25 ance for forensic economists to develop inclusive fu-

1 ture earnings tables that do not rely on race, eth-
2 nicity, gender, religion, or actual or perceived sexual
3 orientation; and

4 (2) the Secretary of Labor and the Attorney
5 General shall develop guidance for States on how to
6 make calculations of future earnings in State tort
7 proceedings free of bias on the basis of race, eth-
8 nicity, gender, religion, or actual or perceived sexual
9 orientation.

10 **SEC. 5. STUDY AND REPORT.**

11 (a) JUDICIAL CONFERENCE OF THE UNITED
12 STATES.—

13 (1) IN GENERAL.—Not later than 1 year after
14 the date of enactment of this Act, the Judicial Con-
15 ference of the United States shall conduct a study
16 on—

17 (A) damages awarded under Federal law
18 for personal injury; and

19 (B) the aggregate data described in para-
20 graph (1)—

21 (i) by case type, including employment
22 discrimination and tort damages;

23 (ii) by protected classes, including
24 race, ethnicity, gender, religion, and actual
25 or perceived sexual orientation; and

1 (iii) any other information that the
2 Judicial Conference of the United States
3 determines is relevant.

4 (2) REPORT.—Not later than 18 months after
5 the date of enactment of this Act, the Judicial Con-
6 ference of the United States shall submit to Con-
7 gress a report on the study conducted under para-
8 graph (1).

9 (b) ADMINISTRATIVE OFFICE OF THE UNITED
10 STATES COURTS.—Not later than 1 year after the date
11 of enactment of this Act, the Administrative Office of the
12 United States Courts shall conduct a study and submit
13 to Congress recommendations resulting from the study on
14 how to ensure that calculations of future earning potential
15 of plaintiffs that take into account age and disability with-
16 out conflicting with Federal equal protection laws.

17 **SEC. 6. TRAINING.**

18 The Federal Judicial Center shall conduct training
19 for Federal judges on how to implement this Act, includ-
20 ing instructions on how to use tables on future earnings
21 in evidence that comply with this Act.

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