



# CONSUMER ATTORNEYS OF CALIFORNIA

*Seeking Justice for All*

## Ending racial profiling in damage awards

**SB 41**  
*Sen. Robert Hertzberg*

### SUMMARY OF THE BILL

SB 41 ensures women and minorities are not deprived of fair compensation by preventing the use of racially biased data in determining civil damage awards for personal injury or wrongful death actions.

### BACKGROUND

In a bigoted effort to reduce a defendant's financial exposure in civil cases, some attorneys use biased race- and gender-based historical data to argue that minorities and women deserve lower awards.

A vivid example of this tactic occurred in a 2016 federal case in Brooklyn. The jury was determining how much to award a 4-year-old mentally disabled boy who had been poisoned by lead paint in his family's rental apartment. The landlord's attorney disputed the lifetime income projections provided by the boy's attorney because the boy was Hispanic and, the attorney argued, statistically less likely to obtain an advanced education that would result in such large earnings. The landlord's attorney rationalized that "the [proportion] of Hispanics attaining master's degrees was in the neighborhood of [only] 7.37 percent." The judge refused to allow this argument and wrote in his opinion: "Race and ethnicity are not, and should not, be a determinant of individual achievement. To support such a proposition distorts the American dream..."

Unfortunately, the judge's conclusion is not always the norm. The use of biased statistical tables to calculate civil damages is a standard practice across the country, including California.



### PROBLEM

Current statutes do not adequately spell out that the use of such racial profiling to limit damage awards is bigoted and should be prohibited.

Civil rights laws prohibit discrimination against protected classes in a variety of areas, yet no state or federal law prohibits the use of race, gender, religion,

or sexual orientation in the calculation of damages awarded to injured parties.

The result has been severe and unaddressed discrimination in court-awarded damages for certain protected classes. This practice deprives some individuals of fair compensation and perpetuates systemic inequality.

### SOLUTION

SB 41 remedies this injustice by prohibiting judges, juries and expert witnesses from considering a plaintiff's race, gender, religion or sexual orientation in calculating civil damage awards.

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