



AB-1287 Price discrimination: gender. (2021-2022)

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Assembly Bill No. 1287

CHAPTER 555

An act to add Section 51.14 to the Civil Code, relating to civil rights.

[Approved by Governor September 27, 2022. Filed with Secretary of State
September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1287, Bauer-Kahan. Price discrimination: gender.

Existing law prohibits a business establishment from discriminating against a person because of the person's gender with respect to the price charged for services of similar or like kind. Existing law also requires specified business establishments to disclose in writing the pricing for each standard service, as defined, to display, in a specified manner, a sign stating that it is illegal to base pricing on gender and that a complete price list is available upon request, and to display, in a specified manner, a price list, and to provide the customer with a copy of the complete price list upon request.

This bill would prohibit a person, firm, partnership, company, corporation, or business from charging a different price for any 2 goods that are substantially similar, as defined, if those goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended. The bill would authorize the Attorney General to seek an injunction to enjoin and restrain the continuance of those violations, and would authorize the court, in addition to granting the injunction, to impose a civil penalty, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 51.14 is added to the Civil Code, to read:

51.14. (a) For the purposes of this section, the following terms apply:

- (1) "Business" means any business acting within the State of California that sells goods to any individual or entity, including, but not limited to, retailers, suppliers, manufacturers, and distributors.
- (2) "Goods" means any consumer products used, bought, or rendered primarily for personal, family, or household purposes.

(3) (A) "Substantially similar" means two goods that exhibit all of the following characteristics:

- (i) No substantial differences in the materials used in production.
- (ii) The intended use is similar.
- (iii) The functional design and features are similar.
- (iv) The brand is the same or both brands are owned by the same individual or entity.

(B) A difference in coloring among any of the goods shall not be construed as a substantial difference for the purposes of this paragraph.

(b) A person, firm, partnership, company, corporation, or business shall not charge a different price for any two goods that are substantially similar if those goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended.

(c) This section does not prohibit price differences in goods or services based specifically upon any of the following:

- (1) The amount of time it took to manufacture those goods.
- (2) The difficulty in manufacturing those goods.
- (3) The cost incurred in manufacturing those goods.
- (4) The labor used in manufacturing those goods.
- (5) The materials used in manufacturing those goods.
- (6) Any other gender-neutral reason for charging a different price for those goods.

(d) (1) Notwithstanding any other law, whenever the Attorney General has cause to believe that a violation of this section has occurred, the Attorney General may, upon notice to the defendant of not less than five days, seek a court order to enjoin and restrain the continuance of those violations.

(2) If a court finds that the defendant has violated this section, an injunction may be issued by the court enjoining or restraining any violation, without requiring proof that any person has, in fact, been injured or damaged thereby. The court may make direct restitution, if applicable. In connection with the proposed application for an injunction, the Attorney General is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(3) If a court finds that the defendant has violated this section, a court may impose a civil penalty not to exceed ten thousand dollars (\$10,000) for the first violation, and a civil penalty not to exceed one thousand dollars (\$1,000) for each subsequent violation. The total civil penalty imposed pursuant to this paragraph shall not exceed one hundred thousand dollars (\$100,000).

(4) Notwithstanding paragraph (3), a court may impose additional civil penalties upon a defendant exceeding one hundred thousand dollars (\$100,000) if the defendant subsequently violates this section with respect to the same goods for which the maximum civil penalty has been previously imposed under a separate civil action or for any good for which the Attorney General has not brought civil action pursuant to this section.

(e) For the purposes of this section, each instance of charging a different price for two goods that are substantially similar, as specified in subdivision (b), shall constitute a single violation.

(f) This section does not limit liability under the Unruh Civil Rights Act (Section 51).