

## **GENDER-BASED PRICE DISCRIMINATION: CALIFORNIA SEEKS TO EXTEND LAW TO PROHIBIT DISCRIMINATION IN PRICING OF GENDER-SPECIFIC GOODS**

May 19, 2016

California is taking on gender price discrimination. [California law](#) already prevents businesses from gender-based price discrimination for services such as haircuts, alterations, and dry cleaning. A recently proposed bill ([Senate Bill 899, Hueso](#)) would extend that law to “retailers” and prohibit price discrimination in the sale of “goods.”

SB 899 recently passed out of the Senate Judiciary Committee, where several positive amendments were made after comments from the California Retailers Association and others. One significant change from the original proposed legislation is elimination of a requirement that retailers post the prices of all goods so that consumers could determine if “men’s” and “women’s” products were priced the same. The bill also removed food products from its broad scope.

The bill as amended states: “No business establishment . . . may discriminate, with respect to the price charged for goods of a substantially similar or like kind, against a person because of the person’s gender.” “Substantially similar” is defined as goods that do all of the following: “(A) Share the same brand; (B) Share the same functional components; and (C) Share 90 percent of the same materials or ingredients.”

The amended bill also permits price differences based “specifically on the labor, materials, tariffs, or other gender-neutral reasons for having increased cost for providing the goods.” The bill contains a statutory penalty of \$4,000 for violations and contains an attorneys’ fees provision.

While substantially improved since introduction, SB 899 remains problematic: What goods are gender-specific? Would a pink towel or scented soap be considered a “female” product? Would all black, brown, or grey towels be considered “male” products? Even if a retailer could identify products that are “gender-specific,” how would it maintain price “equality”? Would a retailer have to create lists of gender-specific products and police the prices of those products? How would retailers coordinate between buyers in different markets to ensure that the retail price of a “women’s” product will be the same as a similar “men’s” product sourced by another buyer, from

another vendor, or in another location? How would retailers maintain the price “equivalence” for markdowns, sales, close-outs and promotions?

On the subject of price differentials, will the retailer have to prove that the difference was justified based on “labor, materials, tariffs, or other gender-neutral reasons?” Are additional costs of development, merchandising or packaging a valid basis for a price differential?

If passed, SB 899 will require major changes in the current retail pricing schemes of both large and small retailers. This bill will make it more difficult to establish prices for goods, or to change the price of any item. There may be fewer markdowns because retailers will have to determine whether the affected item is gender-specific, which would then require a change in the price of other similar products sold by the retailer.

The bill goes next to the State Senate Floor. It is supported by the Consumer Federation of California, the American Civil Liberties Union, California Public Interest Research Group, California Association of Retired Americans, Equal Rights Advocates, Mujeres Unidas y Activas, Older Women’s League, and Women’s Foundation of California.

The bill and momentum behind gender price equality comes in part from a recent survey by the NYC Department of Consumer Affairs, showing significantly higher prices for products “targeted” to women and girls: [https://consumercal.org/wp-content/uploads/2016/03/From-Cradle-to-Cane\\_NYC-DCA.pdf](https://consumercal.org/wp-content/uploads/2016/03/From-Cradle-to-Cane_NYC-DCA.pdf)

We will continue to follow and report.

## MEET THE TEAM



### **Merrit M. Jones**

San Francisco

[merrit.jones@bclplaw.com](mailto:merrit.jones@bclplaw.com)

[+1 415 675 3435](tel:+14156753435)

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should

consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.