
Consumer Protection & Business Committee

SSB 5171

Brief Description: Addressing consumer gender discrimination.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Trudeau, Hunt, Lovelett, Cleveland, Keiser, Wilson, C., Hasegawa, Saldaña, Conway, Frame, Kuderer, Nguyen, Nobles, Pedersen, Stanford, Valdez and Wellman).

Brief Summary of Substitute Bill

- Prohibits persons, entities, and businesses from charging different prices for two substantially similar goods based on the gender of the persons to whom the goods are marketed, subject to exceptions.
- Establishes that prohibited gender-based pricing vitally affects the public interest and constitutes an unfair or deceptive act in trade or commerce and unfair method of competition for purposes of a Consumer Protection Act claim.
- Authorizes certain investigation and enforcement authority by the Attorney General.

Hearing Date: 3/21/23

Staff: Michelle Rusk (786-7153).

Background:

Gender-Related Price Differences.

In 2018 the United States Government Accountability Office (GAO) described gender-related price differences as situations where consumers are charged different prices for the same or

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similar goods and services because of factors related to gender. The GAO explained that firms might differentiate consumer products to appeal separately to men and women by slightly altering product attributes like color or scent.

Washington's Law Against Discrimination.

Washington's Law Against Discrimination establishes that it is a civil right to be free from discrimination based on race, color, creed, national origin, sex, sexual orientation, age, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. This right applies to employment; places of public resort, accommodation, assemblage, or amusement; and real estate, credit, and insurance transactions. To effectuate the right to be free from discrimination, the law defines certain practices as being unfair.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair or deceptive acts or practices in trade or commerce. Private persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees. Courts may increase awarded damages up to three times the actual damages sustained.

The Attorney General may also bring an action in the name of the State, or on behalf of individuals, against any person to enjoin violations of the CPA and obtain restitution. The prevailing party may, in the discretion of the court, recover costs and attorney's fees. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA, which are paid to the State.

Summary of Bill:

Prohibition.

No person, entity, or business may charge a different price for two substantially similar goods if they are priced differently based on the gender of the persons to whom they are marketed and intended. The following definitions apply:

- "Goods" includes any consumer products used, bought, or rendered primarily for personal, family, or household purposes.
- "Substantially similar" means two goods that exhibit no substantial difference in production materials, intended use, functional design and features, or brand. A difference in coloring must not be construed as a substantial difference.
- "Business" means any business acting within the state that sells goods to individuals or entities, including but not limited to retailers, suppliers, manufacturers, and distributors.

Exceptions to Prohibition.

It is not prohibited to price goods or services differently based upon the amount of time, difficulty, cost, labor, or materials used in manufacturing, or any other gender-neutral reason.

Enforcement.

Prohibited gender-based pricing is deemed to vitally affect the public interest and constitute an

unfair or deceptive act in trade or commerce and unfair method of competition for purposes of a Consumer Protection Act claim.

Additionally, the Attorney General is given the authority to, upon five days' notice to a defendant, petition the court for an order enjoining and restraining a violation of the prohibition on gender-based price differences when the Attorney General has cause to believe a violation has occurred. In connection with seeking an injunction, the Attorney General may conduct investigations and make determinations of relevant facts.

Upon a finding of a violation, a court may issue an injunction without requiring proof that any person has, in fact, been injured or damaged from the violation, and may also order a defendant to make direct restitution.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.