SENATE BILL REPORT
SSB 5171

As Passed Senate, March 7, 2023

Title: An act relating to consumer gender discrimination.

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 History:
Committee Activity: Law & Justice: 1/16/23, 1/19/23 [DPS, DNP].
Ways & Means: 2/22/23, 2/24/23 [DPS (LAW), DNP].
Floor Activity: Passed Senate: 3/7/23, 27-21.

Brief Summary of First Substitute Bill

- Prohibits businesses from charging different prices for any two goods that are substantially similar based on the gender of the target market.
- Authorizes the attorney general to seek an injunction against businesses who participate in gender-based price discrimination.
- Authorizes a court to enjoin any violation without requiring proof that any person has been injured or damaged by the violation.
- Provides civil penalties.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5171 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L.

Staff: Joe McKittrick (786-7287)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5171 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Torres and Wagoner.

Staff: Julie Murray (786-7711)

Background: Gender-related price differences occur when consumers are charged different prices for the same or similar goods and services because of factors related to gender. Businesses differentiate many consumer products to appeal separately to men and women by slightly altering product attributes like color or scent. A 2018 study by the federal Government Accountability Office (GAO) determined that of ten categories of personal care products studied, five categories showed significantly higher prices for women, and two showed higher prices for men.

According to a 2015 study produced by the New York City Department of Consumer Affairs, women's products carry a higher price tag 42 percent of the time and men's products carry a higher price tag 18 percent of the time. This study found that products marketed towards women were priced an average of 7 percent higher than substantially similar men's products.

Summary of First Substitute Bill: Individuals, firms, partnerships, companies, and businesses are prohibited from charging different prices 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.

"Substantially similar" means two goods that exhibit no substantial difference in:

- the materials used in production;
- the intended use of the good;

- the functional design of and features of the good; or
- the brand of the good.

The prohibition against substantially similar product price differences does not apply if the price difference is based on any of the following:

- the amount of time it took to manufacture the goods;
- the difficulty in manufacturing those goods;
- the cost incurred in manufacturing those goods;
- the labor used in manufacturing those goods;
- the materials used in manufacturing those goods; or
- any other gender-neutral reason for charging different prices for those goods.

A violation of the prohibition against gender-based price discrimination constitutes a per se violation of the consumer protection act. Whenever the attorney general has cause to believe a seller is selling any two goods that are substantially similar at a different price based on the gender of the intended market, the attorney general is authorized to petition the court for an order to enjoin and restrain such practices. A court may issue an injunction against such practices without requiring proof that any individual has been injured or damaged. A court may also order restitution be paid, if applicable.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: When women go shopping, the bottle that is pink costs more than the bottle that is blue. This is called the pink tax. It is so often that products that are marketed to women cost much more than the same product that is marketed to men. This creates implicit barrier to women. Companies are targeting women's lack of awareness of price differences. There is no reason one product should be more expensive than the other when they do not have different ingredients or a different manufacturing process. The purpose of this bill is to prevent discrimination. Women do not earn the same amount of money as men. This problem is even worse with women of color. Even if the difference is only a few dollars or cents, this adds up over a lifetime. This is not a symbolic bill. It includes enforcement measures. This will improve the Washington State Consumer Protection Act. It is consumer protection for women as well as men. Retail companies and brands will know if they would be in violation and can change prices before it becomes a problem. Reducing the impact of the pink tax is a great step to ensure everyone is treated equally. Passage of this bill is essential.

CON: Products in stores should not be priced based on gender, especially if they are substantially similar. This bill would unfairly penalize local grocers for pricing set by manufacturers. Local grocery stores add a small markup after receiving inventory but do not make pricing decisions based on product type. Issuing civil penalties that would require retailers to prove the manufacturer charged them different prices is extremely expensive. All decisions being made on pricing is happening on the manufacturer level and being passed down to suppliers and retailers. This would be a detriment to many communities who rely on local grocers for their shopping needs. This bill should be altered to remove retailers, distributors, and their suppliers from the definition of business.

Persons Testifying (Law & Justice): PRO: Senator Manka Dhingra, Prime Sponsor; Benjamine Howard, Lake Washington High School; Mahee Nemani; Abigail Jalso, Lake Washington High School; Gabrielle Heuer, Lake Washington High School; Ana Ferreira, Lake Washington High School; Catherine Im, Lake Washington High School; Penny Sweet, Mayor of Kirkland; Jessica Forsythe, City of Redmond, Council President; Michael Moran, Lake Washington High School/Capitol Classroom; Tyler Nathan, Lake Washington High School; Pari Harkishnani, Lake Washington High School.

CON: Katie Beeson, Washington Food Industry Association (WFIA); Michael McShane.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill will help women save money, as they are paying substantially more for necessities. Washington must acknowledge and support the residents who are suffering from consumer discrimination. California and New York's fiscal notes for similar legislation were not as high as Washington's, but the state should not allow this cost to prevent action.

OTHER: This bill unfairly punishes local grocers and convenience stores, as they are not the ones who set prices. The language should be adjusted to remove retailers and distributes, because any complaint against them hurts their business unfairly.

Persons Testifying (Ways & Means): PRO: Benjamine Howard, Lake Washington High School; Tyler Nathan, Lake Washington High School.

OTHER: Katie Beeson, Washington Food Industry Association (WFIA).

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.