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**SENATE BILL 5171**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Dhingra, Trudeau, Hunt, Lovelett, Cleveland, Keiser, C. Wilson, Hasegawa, Saldaña, Conway, Frame, Kuderer, Nguyen, Nobles, Pedersen, Stanford, Valdez, and Wellman

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1 AN ACT Relating to consumer gender discrimination; amending RCW  
2 19.86.140; adding a new section to chapter 19.86 RCW; and prescribing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.86  
6 RCW to read as follows:

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

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

14 (a) The amount of time it took to manufacture those goods;

15 (b) The difficulty in manufacturing those goods;

16 (c) The cost incurred in manufacturing those goods;

17 (d) The labor used in manufacturing those goods;

18 (e) The materials used in manufacturing those goods; or

19 (f) Any other gender-neutral reason for charging a different  
20 price for those goods.

1 (3) (a) Notwithstanding any other law, whenever the attorney  
2 general has cause to believe that a violation of this section has  
3 occurred, the attorney general may, upon notice to the defendant of  
4 not less than five days, petition a court for an order to enjoin and  
5 restrain the continuance of those violations.

6 (b) If a court finds that the defendant has violated this  
7 section, an injunction may be issued by the court enjoining or  
8 restraining any violation, without requiring proof that any person  
9 has, in fact, been injured or damaged thereby. The court may require  
10 the defendant to make direct restitution, if applicable. In  
11 connection with the proposed application for an injunction, the  
12 attorney general is authorized to conduct an investigation under this  
13 chapter and make a determination of the relevant facts in support of  
14 a petition for an injunction.

15 (4) For purposes of this section:

16 (a) "Business" means any business acting within the state of  
17 Washington that sells goods to any individual or entity including,  
18 but not limited to, retailers, suppliers, manufacturers, and  
19 distributors.

20 (b) "Goods" means any consumer products used, bought, or rendered  
21 primarily for personal, family, or household purposes.

22 (c) (i) "Substantially similar" means two goods that exhibit all  
23 of the following characteristics:

24 (A) No substantial differences in the materials used in  
25 production;

26 (B) The intended use is similar;

27 (C) The functional design and features are similar; and

28 (D) The brand is the same or both brands are owned by the same  
29 individual or entity.

30 (ii) A difference in coloring among any of the goods shall not be  
31 construed as a substantial difference for the purposes of this  
32 subsection.

33 **Sec. 2.** RCW 19.86.140 and 2021 c 228 s 2 are each amended to  
34 read as follows:

35 (1) Every person who shall violate the terms of any injunction  
36 issued as in this chapter provided, shall forfeit and pay a civil  
37 penalty of not more than \$125,000.

38 (2) Every individual who violates RCW 19.86.030 or 19.86.040  
39 shall pay a civil penalty of not more than \$180,000. Every person,

1 other than an individual, who violates RCW 19.86.030 or 19.86.040  
2 shall pay a civil penalty of not more than \$900,000.

3 (3) Every person who violates RCW 19.86.020 shall forfeit and pay  
4 a civil penalty of not more than \$7,500 for each violation: PROVIDED,  
5 That nothing in this paragraph shall apply to any radio or television  
6 broadcasting station which broadcasts, or to any publisher, printer  
7 or distributor of any newspaper, magazine, billboard or other  
8 advertising medium who publishes, prints or distributes, advertising  
9 in good faith without knowledge of its false, deceptive or misleading  
10 character.

11 (4) For unlawful acts or practices that target or impact specific  
12 individuals or communities based on demographic characteristics  
13 including, but not limited to, age, race, national origin,  
14 citizenship or immigration status, sex, sexual orientation, presence  
15 of any sensory, mental, or physical disability, religion, veteran  
16 status, or status as a member of the armed forces, as that term is  
17 defined in 10 U.S.C. Sec. 101, an enhanced penalty of \$5,000 shall  
18 apply.

19 (5)(a) Every defendant who violates section 1 of this act shall  
20 pay a civil penalty not to exceed \$10,000 for the first violation,  
21 and a civil penalty not to exceed \$1,000 for each subsequent  
22 violation. The total civil penalty imposed shall not exceed \$100,000.

23 (b) Notwithstanding (a) of this subsection, a court may impose  
24 additional civil penalties upon a defendant exceeding \$100,000 if the  
25 person subsequently violates this section with respect to the same  
26 goods for which the maximum civil penalty has been previously imposed  
27 under a separate civil action or for any good for which the attorney  
28 general has not brought civil action pursuant to this section.

29 (c) Each instance of charging a different price for two goods  
30 that are substantially similar, as specified in section 1(4) of this  
31 act shall constitute a single violation.

32 (d) This subsection does not limit liability under chapter 49.60  
33 RCW, the law against discrimination, or any other law.

34 (6) For the purpose of this section the superior court issuing  
35 any injunction shall retain jurisdiction, and the cause shall be  
36 continued, and in such cases the attorney general acting in the name  
37 of the state may petition for the recovery of civil penalties.

38 (7) With respect to violations of RCW 19.86.030 and 19.86.040,  
39 the attorney general, acting in the name of the state, may seek  
40 recovery of such penalties in a civil action.

1       (8) By December 1, 2022, and every five years thereafter, the  
2 office of the attorney general shall evaluate the efficacy of the  
3 maximum civil penalty amounts established in this section in  
4 deterring violations of the consumer protection act and the  
5 difference, if any, between the current penalty amounts and the  
6 penalty amounts adjusted for inflation, and provide the legislature  
7 with a report of its findings and any recommendations in compliance  
8 with RCW 43.01.036.

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