

**FLOOR ALERT**  
**JOB KILLER**

May 5, 2017

TO: Members, California State Assembly

FROM: Jennifer Barrera, Policy Advocate 

**SUBJECT: AB 1576 (LEVINE) GENDER DISCRIMINATION: PRICING GOODS**  
**OPPOSE – JOB KILLER**

The California Chamber of Commerce is **OPPOSED** to **AB 1576 (Levine)** as amended on May 3, 2017 which has been labeled a **JOB KILLER**. **AB 1576** will expose small and large businesses to the same costly litigation that has been plaguing the business community with regard to disability access, for minimal price differences on “substantially similar goods” that are targeted at different genders yet based on gender-neutral factors. For products that are not targeted at a gender, **AB 1576** will force businesses into determining the gender of various products by engaging in gender stereotyping based upon traditional social expectations that scholars have urged businesses to avoid.

**AB 1576 Exposes Small Businesses and Large Businesses to Significant Litigation Similar to the Construction Disability Access Litigation Plaguing California:**

**AB 1576** creates significant exposure to costly litigation for small and large businesses for any good or product that is “substantially similar,” but yet priced differently. While the recent amendments provide a limited list of “gender-neutral” reasons as to why a good may be priced differently, proof of those reasons will only come up after litigation has already been filed and costs and attorney’s fees incurred. **AB 1576** is also covered by Civil Code Section 52, which is the same code section that has created the ADA drive-by litigation scheme in California. Specifically, Civil Code Section 52(a) provides a minimum \$4,000 in actual damages, per violation, with the right to attorney’s fees.

Accordingly, under **AB 1576**, a consumer could go to a separate retailer or even the same retailer daily and purchase multiple items they believe are substantially similar, yet priced differently (even \$0.01 would be enough), and request the business to settle with them for a minimum of \$4,000 or face costly litigation. While the business may very well be able to prove the price difference was based upon a gender-neutral reason, the cost of litigation to prove that defense is significant. This is the exact type of frivolous litigation that businesses across California are struggling with for alleged ADA violations with regard to construction disability access requirements, as it is the exact same section of the Civil Code that covers both issues. California businesses do not need exposure to another layer of such extortionist litigation as **AB 1576** will create.

California businesses are already experiencing such costly litigation under California's Gender Tax Repeal Act 1995, codified in Civil Code Section 51.6 that prohibits businesses from charging different prices based on gender for the same services. This section also has the minimum \$4,000 statutory damages for any alleged violation, like **AB 1576**. As set forth in the Assembly Judiciary Committee Analysis on AB 1615 (Garcia) for the April 4, 2017 hearing, which is a bill that seeks to provide some legal protections for businesses under the Gender Tax Repeal Act, it states:

*"According to the author, a handful of unscrupulous attorneys have targeted small, often immigrant-owned businesses by alleging that they violated the law by charging different prices to men and women for services of a 'similar or like kind.' In one well-publicized case, a male attorney sends his girlfriend (who later become his wife) into a hair salon for a haircut. If he is charged a different price, he issues a demand letter threatening to sue the business for violating the law and, if this does not present a settlement payment, he serves and files a complaint. The attorney has done the same with several dry cleaning businesses. The author contends that in many instances the different prices charged reflected real differences in time, difficulty, and cost of providing services. However, because the attorney targets small, often immigrant-owned businesses that are not always aware of their rights and obligations under the law, the businesses settle, often for thousands of dollars."*

Other published cases have indicated the same litigation trend against larger businesses as well. See *Reese v. Wal-Mart Stores, Inc.* 73 Cal.App.4th 1225 (1999) (a male customer tried to pursue a class action against the retailer for offering "Ladies Day" promotional discounts for oil changes. Evidence indicated the customer actually went into the retailer that day solely to create a claim against Wal-Mart for gender discrimination); *Surrey v. TrueBeginnings*, 168 Cal.App.4th 414 (1999) (denying a male customer who claimed he was denied free internet dating services as a violation of the Gender Tax Repeal Act, summary judgment based upon his lack of standing); and *Angelucci v. Century Supper Club*, 41 Cal.4th 160 (2007) (male customers pursued litigation against a nightclub for charging women a lower admission price).

Expanding Civil Code Section 51.6 to thousands of goods will only expand the number of individuals who will target businesses and intentionally seek out alleged violations for personal financial gain.

### **AB 1576 Forces Businesses to Engage in Gender Stereotyping or Increase Consumer Prices:**

**AB 1576** amends Civil Code Section 51.6 to specify that businesses cannot discriminate on the basis of gender for prices charged for goods that are the same or "substantially similar" and are targeted at a specific gender. Determining which goods are "substantially similar" and targeted at a specific gender will require an extensive analysis. However, the bill fails to indicate what businesses should do with goods that are not targeted at a specific gender through either advertising or special placement within a retail location. Without a specific exemption for gender-neutral products, **AB 1576** will require businesses to engage in an analysis of what are female items versus male items according to stereotypes that scholars have been advocating companies to eliminate. Specifically, in a February 2015 article written by Rebecca Hains, a professor at Salem State University and assistant director of the Center for Childhood Youth Studies, titled "*The Problem with Separate Toys for Girls and Boys*," she cautioned parents of the adverse consequences associated with assigning gender to toys. Hains' article warns that such gender stereotyping encourages the notion that boys and girls are different and "lies at the core of many of our social processes of inequality."

In August 2015, a major retailer actually agreed to remove any gender labels in children's goods. This move was applauded by psychologists who stated that gender labeling products could have ongoing consequences: "[c]hildren may then extend this perspective from toys and clothes into future roles, occupations, and characteristics." See Alice Robb, New York Times Live, August 12, 2015, "*How Gender-Specific Toys Can Negatively Impact a Child's Development.*"

Despite these adverse risks and consequences noted, **AB 1576** would force businesses back into gender stereotyping, such as assuming anything pink is for a female and anything blue is for a male, to make sure they do not charge a consumer a higher price for products that are substantially similar.

**AB 1576 Will Subject Businesses to Litigation Even When They Price a Product Targeted at Females at a Lower Price:**

**AB 1576** does not prohibit a higher price for substantially similar goods that are targeted at a female. Rather, it prohibits a “price differences” or the discrimination in pricing for substantially similar goods that are targeted at a gender. Accordingly, even if a product that according to advertising and placement in the store is deemed to be targeted at female, yet has a *lower price* than the same product targeted at a man, the business would still be subject to litigation. There is no requirement for any economic harm as **AB 1576** provides an automatic \$4,000 in damages for any violation.

For these reasons, we are **OPPOSED** to **AB 1576** as a **JOB KILLER**.

cc: The Honorable Mike Levine  
Daniel Seeman, Office of the Governor  
Paul Dress, Assembly Republican Caucus  
Alison Merrilees, Assembly Judiciary Committee  
District Offices, Members, California State Assembly

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