



# *South Dakota Legislative Research Council*

## *Issue Memorandum 96-22*

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### **GENDER-BASED PRICE DISCRIMINATION: DOES IT REQUIRE A NEW SOLUTION OR ENFORCEMENT OF AN OLD LAW?**

#### ***BACKGROUND***

California was the first state to enact a bill specifically prohibiting gender-based price discrimination. Assembly Bill 1100 (1995), sponsored by Assembly Member Jackie Speier, banned any gender-based charges unrelated to the true cost of providing a service. The bill excluded insurance rating practices and health service plans. Important features of the law are that it applies only to services and not products, and that it specifically allows for differences in prices based on differences in services provided. Also known as the Gender Tax Repeal Act of 1995, the bill was aimed at that additional amount of money, or gender tax, women pay for similar goods and services due to gender-based discrimination in pricing. Data collected in California suggested that women effectively pay a gender tax of approximately \$1,351 annually or about \$15 billion for all women in California.

#### ***THE GENDER TAX***

Research in California and other states has found that the gender tax is levied on several services. There is evidence that there is a persistent problem of gender-based price discrimination in the areas of haircuts, laundry, dry cleaning, and alterations.

#### ***Haircuts***

“A Survey of Haircuts & Laundry Services

in California,” conducted by the Assembly Office of Research (AOR) in 1994, showed that women in California paid on the average \$5 more for a haircut than men. A survey conducted by the Florida House of Representatives in January 1995, “A Survey of Gender Bias in Pricing Among Selected Florida Retail Services,” sampled forty hair salons from ten large metropolitan areas in the state. Fifty percent of the hair salons surveyed charged women more than men for a basic haircut; the average was \$6.48 more. These salons also charged women more for haircuts that included shampooing and blow drying, an average of \$9.87 more. Forty percent of the salons charged identical prices for the same services to men and women. In Connecticut, the Office of Legislative Research of the Connecticut General Assembly surveyed ten hairdressers in three cities in 1996. In general, the survey found that hairdressers charged women more than men. The reasons given for the extra charges for women’s hair compared with men’s were the length of hair and the need for more styling for women. This does not explain why women were paying a higher cost for a crew cut than men with ponytails were paying for a haircut.

#### ***Dry cleaners***

The AOR survey also found that 64 percent of those establishments surveyed charged more to launder a woman’s white cotton shirt than a man’s. The California survey

showed that it cost a woman \$1.71 more than a man to have a shirt laundered. In Florida, when forty-one dry-cleaning establishments in ten large metropolitan areas were asked the charge of cleaning women's and men's two-piece suits and of laundering women's and men's suits, nearly 83 percent charged identical prices for all these services. Over 90 percent charged the same for the suits and nearly 93 percent charged the same for the laundered shirts. In Connecticut, the survey of ten dry-cleaning establishments in three cities found that the dry cleaners only charged women more when they required additional services. The dry cleaners surveyed responded that the different prices stemmed from the different services required for women's clothing. Some women have to pay more to have their shirts hand pressed because they are too small to fit the pressing machines, which are usually designed for men's shirts. Also, women's clothing is often silk, which requires dry-cleaning, in contrast to men's shirts, which are generally cotton and can be laundered.

### *Alterations*

Department stores generally charge women for alterations even when those same stores do not charge men. In the Florida survey, which included twenty-two department stores in ten large metropolitan areas, over 68 percent of the surveyed department stores charged women for alterations and did not charge men when purchasing a full price suit. Twenty-three percent charged both men and women for alterations.

### ***THE SOUTH DAKOTA EXPERIENCE***

Senate Bill 133 of the 1996 session contained provisions that were essentially the same as the California bill. It prohibited

any business establishment from discriminating with respect to price against a person because of the person's gender. It did not prohibit price differences based specifically on the amount of time, difficulty, or cost of providing the service, nor did it prohibit offering services at a sale price for a reasonable amount of time. Finally, it specifically exempted health care service plans and insurer underwriting or rating practices from the application of this law.

The bill, introduced by Senator Pam Nelson, was reported out of the Senate Judiciary Committee but failed to receive a majority of votes on the Senate floor. The debate, both in the committee and on the floor of the Senate, focused on the services of dry cleaners. Senator Nelson posed the question of why there was a higher cost for laundering a plain white cotton shirt of a woman than for a plain white cotton shirt of a man. In committee, owners of dry-cleaning establishments argued that most women's shirts are very different than a white cotton shirt. For example, the material may be silk or rayon; the shirt may have some ornamentation which requires special care; or the shirt may be smaller, thereby requiring hand pressing.

South Dakota is not the only state to have recently debated a bill aimed at prohibiting gender-based price discrimination. Eight other states have recently debated similar bills. Those states are Connecticut, Florida, Georgia, Illinois, New Hampshire, New York, Rhode Island, and West Virginia. None of these bills were successful as of the date of this memorandum.

### ***ALTERNATIVE MEANS OF ENFORCEMENT***

The proponents of bills aimed at specifically prohibiting the gender tax contend that there is a need to explicitly prohibit gender-based price discrimination for the provision of services because existing law does not sufficiently protect individuals. They point to the surveys described earlier to support this argument.

Opponents contend that laws specifically prohibiting gender-based price discrimination are unnecessary because discriminatory practices are prohibited under civil rights statutes. In California, for example, the Unruh Civil Rights Act states that all persons are entitled to the full and equal accommodations, advantages, facilities, privileges, and services in all business establishments, regardless of sex, race, color, religion, ancestry, national origin, or disability. In South Dakota, the South Dakota Human Relations Act of 1972, codified in chapter 20-13 of the South Dakota Codified Laws, provides that it is an unfair or discriminatory practice for any person engaged in the provision of public accommodations to accord unequal treatment in the area of price or other consideration because of race, color, creed, religion, sex, ancestry, disability, or national origin. The full text of the statute, § 20-13-23, is as follows:

It shall be an unfair or discriminatory practice for any person engaged in the provision of *public accommodations* because of race, color, creed, religion, sex, ancestry, disability or national origin, to fail or refuse to provide to any person access to the use of and benefit from the services and facilities of such public

accommodations; or to accord adverse, unlawful, or unequal treatment to any person with respect to the availability of such services and facilities, *the price or other consideration therefor*, the scope and equality thereof, or the terms and conditions under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation, and repair. [Emphasis Added].

The term, public accommodations, is defined broadly in the South Dakota statute at § 20-13-1 (12).

(12) "Public accommodations," any place, establishment, or facility of whatever kind, nature, or class that caters or offers *services, facilities, or goods* to the general public for a fee, charge, or gratuitously. Public accommodation does not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public for fee or charge or gratuitously, it shall be deemed a public accommodation during such period of use. [Emphasis Added].

A class action suit could be used to combat gender-based price discrimination. A class action suit is a means by which a group of persons, all interested in the same matter, may sue as representatives of a class without needing to join every member of the class. The procedure of class action suits serves a purpose. "By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation." *Trapp v. Madera Pac., Inc.*, 390 NW 2d 558 (1986). Although class action suits may provide a remedy for cases where claims are small, the claims at issue here are very small and the injured parties are very numerous which limits the effectiveness of a class action suit as an appropriate remedy.

Another response to the issue of price discrimination based on gender is for the consumer to shift her business to establishments which do not engage in gender-based price discrimination. In reality this may not be practical for a variety of reasons. Foremost, there may not be alternative establishments to patronize.

## **CONCLUSION**

The proponents refer to recent studies for

evidence to support the argument that women are paying more for the same or similar services. They contend that a specific law is necessary to address this persistent problem. Time will tell if the California law lives up to its sponsor's intention. The bill as passed allows a business to charge men and women differently if it can show the different prices are based on the time, difficulty, or cost of providing the service. Some fear that this will allow a business to continue this type of discrimination. For example, a dry cleaning establishment could do so by merely refusing to purchase the smaller presses to fit women's shirts. Opponents argue that gender-based price discrimination bills are unnecessary. They maintain that civil rights laws provide the remedy for this discrimination. Actions to challenge allegedly discriminatory practices have had varied results. Practices that actually exclude one gender from a facility or are imposed to discourage the patronage of one gender have been held to be prohibited. However, practices such as ladies' nights, admitting or serving women at places of public accommodation at a lower price, have been held in some cases not to be in violation of civil rights laws or as not giving rise to a cause of action. The debate has begun and is likely to continue as more states examine or reexamine this issue of gender-based price discrimination.

**This issue memorandum was written by Jacque Storm, Senior Legislative Attorney for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

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