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AB-1615 Gender discrimination: civil actions. (2017-2018)

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Assembly Bill No. 1615

CHAPTER 156

An act to add Part 2.55 (commencing with Section 55.61) to Division 1 of the Civil Code, relating to gender discrimination.

[Approved by Governor July 31, 2017. Filed with Secretary of State July 31, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1615, Eduardo Garcia. Gender discrimination: civil actions.

Existing state and federal law prohibits discrimination based on sex. Existing state law, the Unruh Civil Rights Act, prohibits discrimination on a variety of personal characteristics including sex and defines sex to include pregnancy and childbirth. The act provides that sex includes gender and that gender is sex, and that gender includes gender identity and gender expression. Existing law prohibits a business from boycotting or discriminating, among other actions, based on a characteristic protected by the Unruh Civil Rights Act.

Existing law, the Gender Tax Repeal Act of 1995, prohibits a business from discriminating on the basis of a person's gender with respect to the price charged for services of similar or like kind. That existing law does not prohibit price differences based on the amount of time, difficulty, or cost of providing the services. Existing law requires specified businesses, including tailors, barbers and hair salons, and dry cleaners and laundries providing services to individuals, to post a price list in an area conspicuous to customers and to display a clearly visible sign with specified information pertaining to the prohibition on gender-based pricing discrimination.

Existing law prescribes remedies for violations of these prohibitions, which include actual damages, any amount determined by a jury or a court up to a maximum of 3 times the amount of actual damages but in no case less than \$4,000, and attorney's fees to be determined by the court.

This bill would enact the Small Business Gender Discrimination in Services Compliance Act, and would define a "gender discrimination in pricing services claim" as a civil claim in a civil action with respect to a business establishment, including, but not limited to, a claim brought under the Unruh Civil Rights Act or the Gender Tax Repeal Act of 1995, based on an alleged price difference charged for services of similar or like kind against a person because of the person's gender.

The bill would require an attorney, with each demand letter or complaint alleging gender discrimination in pricing services, to provide the defendant or potential defendant with a copy of informational materials pertaining to the prohibition against discrimination in pricing of services. The bill would require those materials to include a specified advisory notice to be adopted by the Judicial Council and a pamphlet or informational materials to be developed by the Department of Consumer Affairs for use by tailors and businesses providing aftermarket clothing alterations, barbers and hair salons, and dry cleaners and laundries providing services to individuals that explain the business' rights and obligations under the Gender Tax Repeal Act of 1995.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 2.55 (commencing with Section 55.61) is added to Division 1 of the Civil Code, to read:

PART 2.55. Small Business Gender Discrimination In Services Compliance Act

55.61. This part shall be known, and may be cited, as the Small Business Gender Discrimination in Services Compliance Act.

55.62. (a) For purposes of this part, the following definitions apply:

(1) "Gender discrimination in pricing services claim" means any civil claim in a civil action with respect to a business establishment, including, but not limited to, a claim brought under Section 51 or 51.6, based wholly or in part on an alleged price difference charged for services of similar or like kind, against a person because of the person's gender.

(2) "Demand letter" means a prelitigation written document that is provided to a business alleging a gender discrimination in pricing services claim and demanding money, whether or not the attorney intends to file a complaint, or eventually files a complaint, in state court.

(b) An attorney shall provide the following items with each demand letter or complaint sent to or served upon a defendant or potential defendant alleging gender discrimination in pricing services, including, but not limited to, claims brought pursuant to Section 51 or 51.6:

(1) A copy of the written advisory notice as specified in subdivision (c). Until the Judicial Council adopts this notice, the attorney shall provide a written statement that replicates the advisory notice described in subdivision (c).

(2) A copy of the pamphlet or other informational material specified in Section 55.63, after the pamphlet or material is developed by the Department of Consumer Affairs.

(c) On or before January 1, 2019, the Judicial Council shall adopt a written advisory notice that shall be used by a plaintiff's attorney to comply with the requirements of paragraph (1) of subdivision (b). The advisory notice shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the advisory notice is available in additional languages, and the Judicial Council Internet Web site address where the different versions of the advisory notice are located. The advisory notice shall state the following:

ADVISORY NOTICE TO DEFENDANT

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUSINESSES

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at www.courts.ca.gov.

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that you have discriminated, with respect to the price charged for services of similar or like kind, against a person because of that person's gender.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. State law requires that businesses charge the same price for the same services, or services of the same or similar kind, regardless of the customer's gender. In addition, state law requires that certain business establishments clearly and conspicuously disclose to their customers in writing the pricing for each standard service provided. The posting requirement applies to the following businesses:

(1) Tailors or businesses providing aftermarket clothing alterations.

(2) Barbers or hair salons.

(3) Dry cleaners and laundries providing services to individuals.

YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.

You have the right to seek assistance or advice about this demand letter or complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

ADDITIONAL THINGS YOU SHOULD KNOW

WHEN YOU CAN AND CANNOT CHARGE DIFFERENT PRICES: The Gender Tax Repeal Act of 1995 (California Civil Code Section 51.6) prohibits a business from charging a different price for the same service because of the gender of the person receiving the service. However, you may charge different prices based specifically upon the amount of time, difficulty, or cost of providing the services.

POSTING PRICES: The Gender Tax Repeal Act of 1995 also requires that certain businesses clearly disclose to the customer in writing the price of each standard service provided. This pricing disclosure is required for the following businesses: tailors or businesses providing aftermarket clothing alterations; barbers or hair salons; dry cleaners and laundries providing service to individuals. The price list must be posted in a place where customers will likely see it and it must be in no less than 14-point boldface font. A business must also provide a written copy of the prices to the customer if one is requested by the customer. Finally, a business must clearly and conspicuously display a sign, in no less than 24-point font, that reads:

“CALIFORNIA LAW PROHIBITS ANY BUSINESS ESTABLISHMENT FROM DISCRIMINATING, WITH RESPECT TO THE PRICE CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND, AGAINST A PERSON BECAUSE OF THE PERSON'S GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON REQUEST.”

RIGHT TO CORRECT A POSTING VIOLATION ONLY: If you receive a written notice claiming that you have failed to properly post any of the above information, you have 30 days to correct the violation. If you fail to correct the violation you will be liable for a civil penalty of \$1,000. (Note that the 30-day period to correct applies only to posting violations, not to discriminatory pricing violations.)

(d) This section does not apply to an action brought by the Attorney General or any district attorney, city attorney, or county counsel.

55.63. (a) On or before January 1, 2019, the Department of Consumer Affairs shall develop a pamphlet or other informational materials for use by the following business establishments: tailors and businesses providing aftermarket clothing alterations; barbers and hair salons; and dry cleaners and laundries providing services to individuals. The pamphlet shall explain the business' rights and obligations under Section 51.6 in clear and concise language. Specifically, the pamphlet shall explain that the business is prohibited from charging different prices for services of similar or like kind based on the customer's gender, unless the price difference is based upon the amount of time, difficulty, or cost of providing the services and that the business shall disclose a price list and sign in the manner prescribed in subdivision (f) of Section 51.6. The pamphlet shall explain that a business has 30 days to correct any violation of the posting requirements in subdivision (f) of Section 51.6 and that a business that fails to correct within 30 days of receiving notice of the violation is liable for a civil penalty of one thousand dollars (\$1,000). The department may include any other information that would help the business comply with Section 51.6.

(b) The department shall provide the pamphlet or other informational materials required by subdivision (a) to an affected business establishment at the time that the business establishment applies for or renews a license, at the time of any inspection, or at both times. The department shall post a copy of the pamphlet or other informational materials on its Internet Web site.