HB 1406-FN - AS INTRODUCED

2024 SESSION

24-2680
09/10

HOUSE BILL ***1406-FN***

AN ACT relative to gender-based pricing of goods and services.

SPONSORS: Rep. Read, Rock. 10

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill prohibits price discrimination based upon to whom goods or services are marketed and establishes a mechanism for enforcement.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

24-2680
09/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to gender-based pricing of goods and services.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Price Discrimination Based on Gender. Amend RSA by inserting after chapter 354-B the following new chapter:

CHAPTER 354-C

PRICE DISCRIMINATION BASED ON GENDER

354-C:1 Definitions.

I. For the purposes of this chapter:

(a) "Business" shall mean any business acting within the state of New Hampshire that sells goods to any individual or entity including, but not limited to, retailers, suppliers, manufacturers, or distributors;

(b) "Goods" shall mean any consumer product used, bought, or rendered primarily for personal, family, or household purposes;

(c) "Services" shall mean any consumer services used, bought, or rendered primarily for personal, family, or household purposes;

(d) "Substantially similar" shall mean:

(1) Two goods that exhibit all of the following characteristics:

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

(B) The intended use is similar;

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

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

(2) Two services that exhibit no substantial difference in:

(A) The amount of time to provide the services;

(B) The difficulty in providing the services; and

(C) The cost of providing the services.

354-C:2 Pricing Goods and Services on the Basis of Gender Prohibited.

I. No person, firm, partnership, company, corporation, or business shall charge a price for any two goods that are substantially similar, if such goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended.

II. No person, firm, partnership, company, corporation, or business shall charge a price for any services that are substantially similar if such services are priced differently based upon the gender of the individuals for whom the services are performed, offered, or marketed.

III. Nothing in this section prohibits price differences in goods or services based specifically upon the following:

(a) the amount of time it took to manufacture such goods or provide such services;

(b) the difficulty in manufacturing such goods or offering such services;

(c) the cost incurred in manufacturing such goods or offering such services;

(d) the labor used in manufacturing such goods or providing such services;

(e) the materials used in manufacturing such goods or providing such services; or

(f) any other gender-neutral reason for having increased the cost of such goods or services.

354-C:3 Enforcement.

I. Whenever the attorney general or designee has cause to believe that a violation of this chapter has occurred, the attorney general or designee may, upon notice to the defendant of not less than 5 days, seek a court order to enjoin and restrain the continuance of those violations.

II. If a court finds that the defendant has violated this chapter, an injunction may be issued by the court enjoining or restraining any violation, without requiring proof that any person has, in fact, been injured or damaged thereby. The court may order restitution, if applicable.

III. If a court finds that the defendant has violated this chapter, a court may impose a civil penalty not to exceed $250 for the first violation, and a civil penalty not to exceed $500 for each subsequent violation.

IV. For the purposes of this section, each instance of charging a different price for two goods that are substantially similar, as specified in 354-C:1, I(d), shall constitute a single violation.

2 Effective Date. This act shall take effect January 1, 2025.

LBA
24-2680
10/31/23

HB 1406-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to gender-based pricing of goods and services.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	$0	$0	$0
Revenue Fund(s)	None			
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source(s)	General Fund			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] No
- Does this bill authorize new positions to implement this bill? [X] No

METHODOLOGY:

This bill prohibits price discrimination based upon to whom goods or services are marketed and establishes a mechanism for enforcement. The Department of Justice states the bill would prohibit covered entities from charging different prices for "substantially similar" goods or services based upon the gender of the person receiving such goods or services. It does not create a private right of action. Instead, it empowers the Attorney General or designee to seek a court order to restrain the proposed unlawful practice. It also empowers the courts to impose civil penalties when a violation has been found to have occurred. Last, it prevents aggregating multiple sales of good or services into a single violation.

The Department indicates existing state law does not prohibit charging different prices based upon who goods or services are marketed to. This bill would create a new type of unlawful act. Many companies that provide consumer goods and services have products that are marketed toward specific genders. Thus, the bill creates a likelihood that the Department will receive a significant increase in complaints. The investigation and litigation of these complaints present complicated issues in determining whether particular goods or services are "substantially similar" for the purposes of this proposed legislation. Additionally, for certain consumer goods

and services, determining the number of violations that have occurred could also present significant challenges. Accordingly, although the cost to the Department to investigate and file litigation is indeterminate, the Department believes that the proposed legislation could present a substantial increase in resources demanded to investigate violations and pursue enforcement actions. The Department expects additional personnel resources would be needed. It is uncertain what extra resources would be needed therefore, the impact on expenditures is indeterminable. While the number of additional personnel needed is not known, the Department has provided information on the cost of specific personnel that would be involved.

Job Title	FY 2025	FY 2026	FY 2027
Attorney Salary, Benefits and Operating Expenses	$117,247	$120,892	$120,892
Legal Assistant Salary, Benefits and Operating Expenses	$86,000	$83,000	$85,000
Paralegal II Salary, Benefits and Operating Expenses	$86,000	$83,000	$85,000

The Department notes there are no revenues associated with this bill.

The Judicial Branch states it is not possible to estimate how this bill would impact the number of filings in the courts. Because the bill establishes an injunctive action, as well as restitution and civil penalties, it is expected that litigation would increase.

AGENCIES CONTACTED:

Department of Justice and Judicial Branch