

**Health Impact Review of SSB 5171
Addressing consumer gender discrimination
(2023 Legislative Session)**

November 9, 2023

Staff contact:

Miranda Calmjoy (she/they)

Phone: (360) 819-0750

Email: Miranda.Calmjoy@sboh.wa.gov



Full review

The full Health Impact Review report is available at:

<https://sboh.wa.gov/sites/default/files/2023-11/HIR-2024-02-SSB%205171a.pdf>

Acknowledgements

We would like to thank the key informants who provided consultation and technical support during this Health Impact Review.

Contents

Executive Summary 3

Introduction and Methods 5

Analysis of SSB 5171 and the Scientific Evidence 7

Logic Model..... 14

Summaries of Findings 15

Additional Considerations 26

Annotated References 28

Executive Summary
SSB 5171, Addressing consumer gender discrimination
(2023 Legislative Session)

Evidence indicates that SSB 5171 may lead to some Washington State consumers, retailers, businesses, and manufacturers becoming aware of the bill provisions, which may lead to some gendered pricing violations being filed, which may lead to some Consumer Protection Act violation penalties and/or direct restitution orders in Superior Court. It is not well researched how provisions may impact the change in prices of certain goods. Based on these findings, the pathway to health impacts could not be completed.

BILL INFORMATION

Sponsors: Dhingra, Trudeau, Hunt, Lovelett, Cleveland, Keiser, Wilson, C., Hasegawa, Saldaña, Conway, Frame, Kuderer, Nguyen, Nobles, Pedersen, Stanford, Valdez, Wellman

Summary of Bill:

- Prohibits price differences of two substantially similar goods due to the marketed and intended gender of the consumer.
- Does not prohibit price differences of goods and services for any gender-neutral reason.
- Allows the Washington State Office of the Attorney General (AGO) to petition the court for an order to enjoin and restrain violations of price prohibitions and conduct investigations to determine violations.
- Allows a court to issue an injunction where a violation has occurred and to require direct restitution.

HEALTH IMPACT REVIEW

Summary of Findings:

This Health Impact Review found the following evidence for provisions in SSB 5171:

- **Informed assumption** that 1) prohibiting price differences of two substantially similar goods due to the marketed and intended gender of the consumer, 2) allowing the AGO to petition the court for an order to enjoin and restrain violations of price prohibitions and conduct investigations to determine violations, and 3) allowing a court to issue an injunction where a violation has occurred and to require direct restitution may lead to some Washington State consumers, retailers, businesses, and manufacturers becoming aware of the changes to the law. This informed assumption is based on information from key informants and additional information from California, New York, and Florida.
- **Informed assumption** that some Washington State consumers, retailers, businesses, and manufacturers becoming aware of the changes to the law may lead to some gendered pricing

violations filed with the AGO and some gendered pricing violations filed through civil litigation. This informed assumption is based on information from key informants.

- **Informed assumption** that some gendered pricing violations filed with the AGO and some gendered pricing violations filed through civil litigation may lead to some Washington State retailers, businesses, and manufacturers receiving Consumer Protection Act violation penalties and/or direct restitution orders in Superior Court. This informed assumption is based on information from key informants and published research on gendered price discrimination.^{3,8,9,23}
- **Not well researched** how some Washington State retailers, businesses, and manufacturers receiving Consumer Protection Act violation penalties and/or direct restitution orders in Superior Court may impact changes in prices of certain goods.

“Additional Considerations” includes potential impacts on consumer and business behaviors.

Introduction and Methods

A Health Impact Review is an analysis of how a proposed legislative or budgetary change will likely impact health and health disparities in Washington State ([RCW 43.20.285](#)). For the purpose of this review “health disparities” have been defined as differences in disease, death, and other adverse health conditions that exist between populations ([RCW 43.20.270](#)). Differences in health conditions are not intrinsic to a population; rather, inequities are related to social determinants (access to healthcare, economic stability, racism, etc.). This document provides summaries of the evidence analyzed by State Board of Health staff during the Health Impact Review of Substitute Senate Bill 5171 ([SSB 5171](#)).

Staff analyzed the content of SSB 5171 and created a logic model visually depicting the pathway between bill provisions, social determinants, and health outcomes and equity. The logic model reflects the pathway with the greatest amount and strongest quality of evidence. The logic model is presented both in text and through a flowchart (Figure 1).

We conducted an objective review of published literature for each step in the logic model pathway using databases including PubMed, Google Scholar, and University of Washington Libraries. The annotated references are only a representation of the evidence and provide examples of current research. In some cases, only a few review articles or meta-analyses are referenced. One article may cite or provide analysis of dozens of other articles. Therefore, the number of references included in the bibliography does not necessarily reflect the strength-of-evidence. In addition, some articles provide evidence for more than one research question, so are referenced multiple times.

We consulted with people who have content and context expertise about the provisions and potential impacts of the bill. The primary intent of key informant interviews is to ensure staff interpret the bill correctly, accurately portray the pathway to health and equity, and understand different viewpoints, challenges, and benefits to the bill. We spoke with 19 key informant interviewees, including: 6 youth and young adults with subject matter expertise; 4 Washington State agency staff working on gender, policy, and consumer and business protection; 4 staff representing Washington State business, retail, and manufacturer associations; 2 New York state consumer protections and Attorney General staff; 1 California State civil rights enforcement agency staff; 1 Washington State attorney; and 1 researcher with expertise on gender and consumer behaviors.

We evaluated evidence using set criteria and determined a strength-of-evidence for each step in the pathway. The logic model includes information on the strength-of-evidence. The strength-of-evidence is summarized as:

- **Very strong evidence:** There is a very large body of robust, published evidence and some qualitative primary research with all or almost all evidence supporting the association. There is consensus between all data sources and types, indicating that the premise is well accepted by the scientific community.
- **Strong evidence:** There is a large body of published evidence and some qualitative primary research with the majority of evidence supporting the association, though some sources may

have less robust study design or execution. There is consensus between data sources and types.

- **A fair amount of evidence:** There is some published evidence and some qualitative primary research with the majority of evidence supporting the association. The body of evidence may include sources with less robust design and execution and there may be some level of disagreement between data sources and types.
- **Expert opinion:** There is limited or no published evidence; however, rigorous qualitative primary research is available supporting the association, with an attempt to include viewpoints from multiple types of informants. There is consensus among the majority of informants.
- **Informed assumption:** There is limited or no published evidence; however, some qualitative primary research is available. Rigorous qualitative primary research was not possible due to time or other constraints. There is consensus among the majority of informants.
- **No association:** There is some published evidence and some qualitative primary research with the majority of evidence supporting no association or no relationship. The body of evidence may include sources with less robust design and execution and there may be some level of disagreement between data sources and types.
- **Not well researched:** There is limited or no published evidence and limited or no qualitative primary research and the body of evidence was primarily descriptive in nature and unable to assess association or has inconsistent or mixed findings, with some supporting the association, some disagreeing, and some finding no connection. There is a lack of consensus between data sources and types.
- **Unclear:** There is a lack of consensus between data sources and types, and the directionality of the association is ambiguous due to potential unintended consequences or other variables.

This review was completed during the interim and was not subject to the 10-day turnaround required by law. More information and detailed methods for this review are available upon request.

Analysis of SSB 5171 and the Scientific Evidence

Summary of relevant background information

- Gender is “a multidimensional construct that encompasses gender identity and expression, as well as social and cultural expectations about status, characteristics, and behavior as they [have historically been] associated with certain sex traits.”^{1a}
- Sex is a “multidimensional biological construct based on anatomy, physiology, genetics, and hormones.”¹
- Gender segmentation marketing is a process of categorizing markets for products based on the gender of the intended consumer.² Companies use gender segmentation to tailor marketing and products to the perceived needs, wants, and preferences of groups of people based on gender.^{2b}
 - Some products, “such as deodorants, shaving products, and hair care products – are differentiated to appeal specifically to men or women through differences in packaging, scent or other product characteristics.”³
 - Some differences across gendered products may be due to manufacturing and marketing costs, while other goods and services cost different amounts when there are no differences in manufacturing costs.³
- Businesses may use competitive pricing strategies, known as price discrimination, to charge different prices to different consumers for the same product or service.⁴ Examples of such marketing strategies include:
 - When different prices are charged to different consumers in an effort to maximize profits, known as first degree price discrimination.³ An example of first degree price discrimination is when a seller creates an individual price offer to each customer.⁵
 - When “consumers self-select into different groups according to their preferences and what they are willing to pay”, known as second degree price discrimination.³ For example, firms may sell different versions of products in different packaging or with different scents, with different versions intended for different groups of people.³ A common example of second degree price discrimination is when discounts are given based on the quantity of product sold (e.g., buying in bulk).⁵
 - When firms use a “group characteristic, such as age or gender, to charge different prices because some groups may have differences in willingness or ability to pay”, known as third degree or group-based price discrimination.³ For example, discounts may be given to youth at movie theaters.⁵ This is likely the most common form of price discrimination.⁵
- Washington State [Title 19 RCW](#) describes business regulation law.⁶

^a Throughout this HIR, we use “woman”/“women” and “man”/“men” to describe gender. The literature often uses female and male to describe gender; however, these terms are associated with biological sex assigned at birth.

^b Throughout this HIR, we describe products marketed to women and products marketed to men. We acknowledge that the gender of people purchasing certain products may or may not align with the gender of whom the products are marketed to. Further, data are not available on which products are marketed to and/or purchased by transgender, gender non-binary, and gender diverse people.

- Washington State’s Consumer Protection Act (CPA) ([Chapter 19.86 RCW](#)) governs restraints of trade; unfair competition; and unfair, deceptive, and fraudulent acts or practices.⁶
- In 2021, Washington State passed SB 5025, known as the “Consumer Protection Improvement Act”, which increased the maximum civil penalties for CPA violations from \$2,000 to \$7,500 and extended the penalties to \$10,000 for violations that impact certain communities who are marginalized, including communities based on sex.⁷
- Several jurisdictions across the U.S. have enacted strategies to stop gender-based pricing discrimination of consumer services and/or goods.
 - In 1996, California passed [Civ. Code § 51.6](#), also known as the “Gender Tax Repeal Act”, which banned “gender-based pricing of consumer services, such as haircuts and dry cleaning.”⁸ Massachusetts, Washington, D.C., and some Virginia counties later enacted similar legislation.⁹
 - In 1997, Miami-Dade County, Florida, passed a law prohibiting charging more for products or services based on a buyer's gender.¹⁰
 - In 1998, New York City Council passed [Bill Number 804-A](#), which prohibited the public display of gender-based pricing of retail services.⁹
 - In 2016, Vermont’s Office of the Attorney General and the Human Rights Commission published guidance on the use of gender and pricing of goods and services.¹¹ The stated intent of the guidance document was to raise consumer awareness and encourage businesses to eliminate gender-based pricing to come into compliance with Vermont law.¹¹ The guidance states that gender-based pricing violates Vermont’s Public Accommodations Act, which prohibits discrimination in a place of public accommodation.¹¹
 - In 2020, New York passed [GBS, Section § 391-U](#) which prohibits the pricing of goods and services on the basis of gender.¹²
 - In 2021, the U.S. passed Military Forces Assuring that Treatment of Items by Gender are Uniform and Equal across the Services Act (FATIGUES) Act which required establishment of criteria for military uniforms.¹³ The intent of the act was “in part to reduce differences in out-of-pocket costs incurred by enlisted members of the Armed Forces across the military services and by gender within military services.”¹³
 - In 2022, California passed [CA AB 1287](#), which added Section 51.14 to the California Civil Code and extended existing restrictions to prohibit the pricing of both goods and services on the basis of gender.¹⁴
 - From 2016 to 2021, legislation known as the “Pink Tax Repeal Act” was introduced in U.S. Congress.⁸ The legislation would prohibit charging higher prices based on gender for products and services.⁸
- Class action cases related to gendered price discrimination have been introduced in legal courts.¹⁵
 - *Schulte v. Conopco, d/b/a Unilever, et al.* (2021; Eastern District of Missouri) resulted in dismissal of the plaintiff’s discrimination complaint, where the court

ruled that certain deodorants marketed to women and deodorants marketed to men were similar, but not identical products.¹⁵

- *Lowe v. Walgreens Boots Alliance, Inc., et al.* (2021; Northern District of California) resulted in dismissal of a class action lawsuit.¹⁵ The plaintiff's complaints were preempted by separate claims related to generic product labeling regulations.¹⁵ The court also dismissed the plaintiff's complaint because California's gendered price discrimination statute did not apply to goods at that time.¹⁵

Summary of SSB 5171

- Prohibits people, firms, partnerships, companies, corporations, and businesses from charging price differences of two substantially similar goods due to the marketed and intended gender of the consumer.
 - Defines “substantially similar” as two goods that exhibit no substantial difference in the materials used in production, the intended use of the good, the functional design and features of the good, and the brand of the good.
 - A difference in color among goods does not qualify as a substantial difference.
 - Defines “goods” as any consumer products used, bought, or rendered primarily for personal, family, or household purposes.
 - Defines “business” as any business acting within Washington State that sells goods to any individual or entity including, but not limited to, retailers, suppliers, manufacturers, and distributors.
- Does not prohibit price differences of goods and services for any gender-neutral reason, including:
 - The amount of time it took to manufacture;
 - The difficulty in manufacturing;
 - The cost incurred in manufacturing;
 - The labor used in manufacturing;
 - The materials used in manufacturing;
 - Any other gender-neutral reason.
- Allows the Washington State Office of the Attorney General (AGO) to petition the court for an order to enjoin and restrain violations of price prohibitions and conduct investigations to determine violations.
- Allows a court to issue an injunction where a violation has occurred and to require direct restitution.

Health impact of SSB 5171

Evidence indicates that SSB 5171 may lead to some Washington State consumers, retailers, businesses, and manufacturers becoming aware of the bill provisions, which may lead to some gendered pricing violations being filed, which may lead to some Consumer Protection Act violation penalties and/or direct restitution orders in Superior Court. It is not well researched how provisions may impact the change in prices of certain goods. Based on these findings, the pathway to health and equity impacts could not be completed.

Pathway to health impacts

The potential pathway leading from the provisions of SSB 5171 to health and equity is depicted in Figure 1.

Based on information from key informants representing some Washington State youth and young adults, staff from the Washington State Office of Minority and Women's Business Enterprises (OMWBE), the Washington Food Industry Association (WFIA), the Washington Retail Association (WRA), the Association of Washington Business (AWB), the California Department of Justice, and the Washington State Office of the Attorney General, Consumer Protection Division (AGO-CPD), a Washington State attorney, and additional information from California, New York, and Florida,¹⁶⁻²² we have made the informed assumption that 1) prohibiting price differences of two substantially similar goods due to the marketed and intended gender of the consumer, 2) allowing the AGO to petition the court for an order to enjoin and restrain violations of price prohibitions and conduct investigations to determine violations, and 3) allowing a court to issue an injunction where a violation has occurred and to require direct restitution may lead to some Washington State consumers, retailers, businesses, and manufacturers becoming aware of these provisions.

Based on information from key informants representing the AGO-CPD, OMWBE, WFIA, WRA, and a Washington State attorney, we have made the informed assumption that some Washington State consumers, businesses, retailers, and manufacturers becoming aware of consumer protection law change may lead to some gendered pricing violations being filed with the Washington State AGO and some legal action on gendered pricing through civil litigation.

Based on information from key informants representing staff from the Washington State Superior Judges Association (SCJA), a Washington State attorney, California Department of Justice (DOJ), New York Consumer Protection Division, and the AGO-CDP and published research on gendered price discrimination,^{3,8,9,23} we have made the informed assumption that some gendered pricing complaints being filed with the AGO and some legal action on gendered pricing through civil litigation may lead to some Washington State retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court.

It is not well researched how some retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court may impact changes in prices of certain goods.^{3,8,9,23,24}

Scope

Due to time limitations, we only researched the most linear connections between provisions of the bill and equity and did not explore the evidence for all possible pathways. For example, we did not evaluate potential impacts related to:

- Gendered price discrimination of services. Some research has found evidence of gendered price discrimination among services such as laundry, haircuts, mortgages, credit, and auto purchases and repairs.^{3,25} Since SSB 5171 does not address price

differences for services, this HIR does not explore price gendered price discrimination of services.

- Wage gaps and policies to prohibit wage discrimination. Some literature connects gendered pricing to wage gaps.²⁶ It is well established and widely accepted that inequities by sex and gender and inequities due to racism are present among wage earnings.²⁷⁻³¹ Data from the U.S. Bureau of Labor Statistics show that in 2021, across the U.S., “women earned \$912 per week, or 83.1[%] of the \$1,097 median for men.”²⁷ Washington State data from 2021 show that women earned less than men at a higher rate than women across the U.S.²⁷ People who are LGBTQ+ experience additional wage gaps. A 2022 study found that LGBTQ+ full time workers typically make 90% of wages made by workers of all sexual orientations and gender identities, while women in the LGBTQ+ community earn 87% of wages earned by all workers.³¹ U.S. data also show that earnings differ by race/ethnicity.^{30,32-34} For example, for every \$1 earned by white, non-Hispanic men, white non-Hispanic women earned 79 cents, Black women earned 64 cents, American Indian and Alaska Native (AIAN) women earned 60 cents, and Hispanic women earned 57 cents.^{33,34} While data indicate that Asian women earned \$1.01 for every \$1 earned by white non-Hispanic men, disaggregated data show wide variation in the wage gap.³³ Disaggregated data show that for every \$1 earned by white, non-Hispanic men, Chinese women earned \$1.03, Vietnamese women earned 63 cents, Nepali women earned 54 cents, and Burmese women earned 52 cents.³³ The U.S. Equal Pay Act (1963), the U.S. Civil Rights Act (1964) prohibit wage discrimination based on sex, race, color, religion, or national origin.²⁶ In addition to federal protections, over forty U.S. states have laws protecting equal pay.²⁶ Washington State [Chapter 49.58 RCW](#) prohibits wage discrimination due to gender.³⁵ This HIR does not explore wage gaps or policies intended to prohibit wage earning discrimination.
- Manufacturers and distributors located outside of Washington State. Many products sold in Washington State are manufactured and distributed by companies located outside of Washington State. Key informants stated that SSB 5171 may impact businesses located outside of Washington State who sell products in the state (personal communication, WRA, October 2023). This HIR did not evaluate the impacts SSB 5171 may have on these businesses.

Magnitude of impact

SSB 5171 has the potential to impact Washington State consumers, businesses, retailers, and manufacturers.

Consumers

According to the U.S. Census, there were approximately 7,785,786 people living in Washington State in 2022, with 49.5% reported as female.³⁶ Limited data are available on consumers’ behaviors, trends, and demographics. Available data indicate that consumer behaviors may vary by gender, marital status, age, and their perception of retailers.^{8,37,38} Research shows that married women in the U.S. typically buy the majority of personal care products for their household, including products marketed to both men and women.⁸ For example, 45% of women buy men’s

deodorant when their husband is not present.⁸ Further, researchers have found that among single-person households, “women primarily purchase items [marketed to] women, and vice versa for men. As an example, 78% of women and 81% of men exclusively purchase deodorants [marketed to] their own gender.”⁸ In an analysis of beauty care product use among women across the U.S., approximately 85% of women reported using at least one of the following beauty care products: make-up, shave care, fingernail care, and hair care (unpublished data, Regis University, October 2023). This analysis also measured women’s perception of feeling coerced into buying products associated with beauty care and found that women consumers reported higher rates of feeling coerced to purchase products associated with undergarments, clothing/shoes, and shaving, and less coercion to purchase products associated with make-up and hair care (unpublished data, Regis University, October 2023).

Consumer behavior may also differ by age. In a survey of consumers across Washington, Oregon, and Idaho (the Pacific Northwest [PNW]) that measured behavior and attitudes around holiday shopping, data show that younger generations reported being more price sensitive, compared to older generations.³⁸

Lastly, consumer behavior may differ based on their perception of retailers. When PNW shoppers were asked what the greatest impact on their decision to buy from a given retailer (in a store or online), a majority (2018: 82%, 2019: 80%, 2020: N/A, 2021: 79%, 2022: 77%) of respondents reported that “it would be if the company has a positive impact on my community.”³⁸

Businesses, Retailers, and Manufacturers

Data from the Washington State Employment Security Department (ESD) indicate that in 2022 there were 280,498 total business establishments in Washington State.³⁹ The majority of establishments were located in King, Pierce, Snohomish, Spokane, and Clark Counties.³⁹

Across the U.S., the retail industry is the largest private sector employer, and the majority (98%) of retailers are small businesses with less than 50 employees.⁴⁰ In 2022 there were 20,048 retail trade establishments responsible for 372,211 jobs in Washington State.³⁹ According to data from the WRA, the majority (87%) of Washington State retail sales occur in physical stores.⁴¹

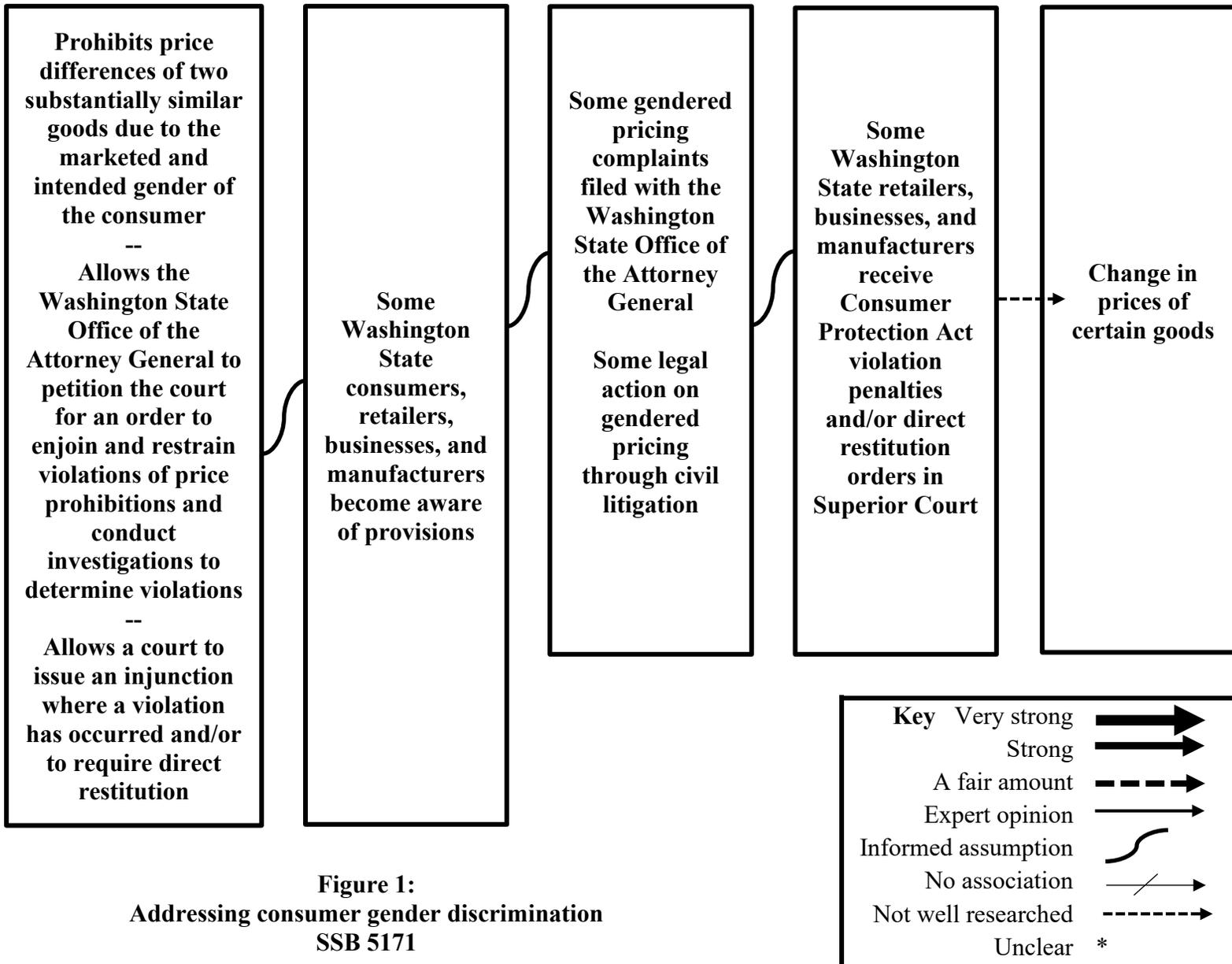
In 2022, there were 8,288 manufacturing establishments responsible for 285,237 jobs in Washington State.³⁹ According to data from the National Association of Manufacturers, Washington State manufacturers account for 8.6% of the total output of the state and employ 7.7% of the state’s workforce.⁴² The largest Washington State manufacturing sectors are aerospace and other transportation equipment; food, beverage and tobacco products; computer and electronic products; and petroleum and coal products.⁴² Some examples of products created by Washington State manufacturers include fabricated metal, transportation equipment, machinery, paper, plastics and rubber, and furniture.⁴³

More granular data are available on Washington retail and manufacturing industry subsectors. Data indicate there were 102 apparel manufacturers; 287 leather and allied product manufacturers; 10,655 merchant wholesalers of goods; 3,086 food and beverage retailers; 75,224 general merchandise retailers; 19,177 health and personal care retailers; 14,736 gasoline stations;

20,803 clothing, accessories, shoe, and jewelry retailers; and 47,969 sporting goods, hobby, musical instrument, book, and miscellaneous retailers in Washington State.^{c,39}

^c Industries likely to produce or sell gendered products were included.

Logic Model



Since it is not well researched how provisions may impact the change in prices of certain goods, the pathway to health impacts could not be completed.

See discussion in Summaries of Findings.

**Figure 1:
 Addressing consumer gender discrimination
 SSB 5171**

Summaries of Findings

Would 1) prohibiting price differences of two substantially similar goods due to the marketed and intended gender of the consumer, 2) allowing the Washington State Office of the Attorney General (AGO) to petition the court for an order to enjoin and restrain violations of price prohibitions and conduct investigations to determine violations, and 3) allowing a court to issue an injunction where a violation has occurred and to require direct restitution lead to Washington State consumers, retailers, businesses, and manufacturers becoming aware of these provisions?

We have made the informed assumption that 1) prohibiting price differences of two substantially similar goods due to the marketed and intended gender of the consumer, 2) allowing the AGO to petition the court for an order to enjoin and restrain violations of price prohibitions and conduct investigations to determine violations, and 3) allowing a court to issue an injunction where a violation has occurred and to require direct restitution may lead to some Washington State consumers, retailers, businesses, and manufacturers becoming aware of these provisions. This informed assumption is based on information from key informants representing some Washington State youth and young adults, staff from the Washington State Office of Minority and Women's Business Enterprises (OMWBE), the Washington Food Industry Association (WFIA), the Washington Retail Association (WRA), the Association of Washington Business (AWB), and the Washington State Office of the Attorney General, Consumer Protection Division (AGO-CPD), a Washington State attorney, and additional information from California, New York, and Florida.

SSB 5171 has the potential to impact Washington consumers, businesses, retailers, and manufacturers, and each group would need to be made aware of consumer protection law changes for changes to be implemented. SSB 5171 does not include provisions related to public awareness, educational efforts, or language access components. Building awareness among consumers and businesses, retailers, and manufacturers also requires that information be available in multiple languages to meet the needs of Washington State's linguistically diverse population. Key informants stated that without language accessible information, Washington State consumers, businesses, retailers, and manufacturers may not become aware of the changes to the law (personal communications, October 2023). However, based on information from key informants and additional information from California, New York, and Florida¹⁶⁻¹⁹ there are various ways people may learn about changes to the law.

Several key informants shared ways that information about SSB 5171 would likely be shared with the public if SSB 5171 were to pass. Key informants from WFIA, WRA, and AWB stated that they would likely share information about changes to the law with their members through newsletters and member educational efforts (personal communications, October 2023). Key informants from OMWBE stated that they would share information about changes to the law through their communications channels, including their website and social media platforms (personal communication, OMWBE, October 2023). Key informants also stated that they would expect law changes to be shared through Washington Law Help,⁴⁴ an online guide to free civil legal services for seniors and people with low-income in Washington State (personal communications, September-October 2023). Some key informants would also expect

information to be shared across businesses via word-of-mouth (personal communication, AWB, October 2023).

While the AGO-CPD website contains valuable information regarding various consumer protections issues, the website does not detail all potential violations of the CPA. Key informants stated that they would not likely update their website to include specific information about the law change were SSB 5171 to pass (personal communication, AGO-CPD, October 2023). The AGO-CPD stated they might engage in other outreach or communications activities such as education campaigns, alerts, or meetings to spread awareness about law changes related to the bill (personal communication, AGO-CPD, October 2023).

New York, California, and Miami-Dade County, Florida, have passed legislation prohibiting gendered pricing discrimination. Government officials in these regions rely on consumers to submit complaints.³ Each of these areas have shared that passage of policies against gendered price discrimination has increased some consumer awareness about the topic.³ Evidence from New York and California indicates it is likely that some consumers, retailer, business, and manufacturers may learn about law changes through news outlets and law firms. Several news outlets^{16,17} and law firms^{18,19} shared information about AB 1287 when it passed the California legislature, and key informants stated they would expect similar coverage in Washington State (personal communications, September-October 2023). New York⁴⁵ and California⁴⁶ consumers may use consumer complaint forms to file a gender price discrimination complaint. New York Department of State, Department of Consumer Protection (DCP) has received 3 complaints since passage of GBS, Section § 391-U in 2020 (personal communication, New York DCP, October 2023). New York issued several consumer alerts^{20,21,47} and business guidance²² after passage of the law. Lastly, New York also initiated a social media campaign to raise awareness about gendered pricing.²³ No formal complaints have been filed with the California Department of Justice (DOJ) since passage of AB 1287 in 2022, which may be due to a lack of awareness about the policy change (personal communication, California DOJ, October 2023). California anticipates spreading awareness of the policy through consumer alerts, bulletins, and potentially a press release and business alerts (personal communication, California DOJ, October 2023). Provisions of SSB 5171 do not require public awareness or educational efforts.

In sum, while SSB 5171 does not include provisions related to consumer, retailer, business, and manufacturer awareness, outreach, educational efforts, or language access, evidence indicates that some consumers, retailers, businesses, and manufacturers would learn about the bill provisions through various efforts. Key informants stated that awareness would be shared through newsletters and listservs, educational and outreach materials, and social media platforms (personal communications, September-October 2023). Evidence from New York, California, and Florida suggests that social media, news outlets, and law firms would help build awareness. However, evidence also indicates that awareness of law changes may not be uniform across the state and may be limited among those who speak languages other than English. Therefore, we made the informed assumption that were SSB 5171 to pass, some consumers, retailers, businesses, and manufacturers may become aware of the prohibition of price differences and processes and penalties for price violations.

Would some Washington State consumers, businesses, retailers, and manufacturers becoming aware of consumer protection law changes lead to some gendered pricing complaints being filed with the AGO and some legal action on gendered pricing through civil litigation?

We have made the informed assumption that some Washington State consumers, businesses, retailers, and manufacturers becoming aware of consumer protection law changes may lead to some gendered pricing complaints being filed with the AGO and some legal action on gendered pricing through civil litigation. This informed assumption is based on information from key informants representing the AGO-CPD, a Washington State attorney, California DOJ, OMWBE, WFIA, and WRA.

The AGO-CPD provides information about consumer rights, including a mechanism for consumers to file formal complaints, and houses a consumer complaint resolution center. Whenever a consumer files a complaint with the AGO-CPD, a formal mediation process between businesses and consumers is initiated. Key informants from the AGO-CPD stated that a common outcome of this mediation process is consumers being returned money (personal communication, AGO-CPD, October 2023). Key informants also stated that a team of consumer protection enforcement professionals review consumer complaints to check for patterns and analyze whether multiple complaints are filed against the same business (personal communication, AGO-CPD, October 2023).

Key informants from the AGO-CPD also stated that under current law, without the passage of SSB 5171, their office could investigate cases of gendered price discrimination (personal communication, AGO-CPD, October 2023). For example, a case of gendered price discrimination could be filed as an unfair trade practice or as a violation of the Consumer Protection Act (CPA) (personal communication, AGO-CPD, October 2023). Gender based pricing qualifies as a practice that impacts a specific group of people based on demographics, and recently amended CPA penalties would apply for these cases (personal communication, AGO-CPD, October 2023). However, to date, the AGO has likely not received complaints nor pursued litigation about gendered price discrimination (personal communication, AGO-CPD, October 2023).

Rather than bring a complaint to the AGO, consumers may hire a civil litigation attorney and file a gendered price discrimination complaint in Superior Court (personal communication, AGO-CPD, October 2023). Once consumers file an injunction, the respondent^d would be obligated to stop engaging in the act in question until the court case was resolved (personal communication, AGO-CPD, October 2023). We were unable to determine if any cases of gendered price discrimination have been pursued through civil litigation in Washington State.

If SSB 5171 were to pass, it may become easier to file and pursue legal action related to gendered pricing discrimination. Key informants stated that under SSB 5171, the AGO-CPD could more easily prove that gendered pricing discrimination is a violation of the CPA or an unfair trade practice, and that the Washington State Legislature’s recognition of this topic could

^d Key informants stated that language in SSB 5171 that refers to a “defendant” is not proper, since the violation at hand is a civil action, rather than a criminal violation (personal communication, SCJA, October 2023). Key informants recommended use of the word “respondent” (personal communication, SCJA, October 2023).

signal that this is an issue worth pursuing legal action (personal communication, AGO-CPD, October 2023). Further, the bill may create an easier process for pursuing private legal action (personal communication, AGO-CPD, October 2023). It is not possible to determine the magnitude in which legal action may be initiated if SSB 5171 were to pass. For reference, New York has received 3 gender price discrimination complaints since the 2020 passage of GBS, Section § 391-U, where all cases were resolved by the Consumer Protection Division and did not elevate to the Office of the New York State Attorney General nor involve an investigation or a legal court case (personal communication, New York CPD, October 2023). California has not yet received gender price discrimination complaints since the passage of AB 1287 in 2022 (personal communication, California DOJ, October 2023).

The AGO-CPD stated that they would expect to hear about alleged violations through several channels, including consumer complaints, newspaper articles, consumer or patient advocacy organizations, or through observation (i.e., AGO staff may witness gendered price discrimination at a business) (personal communication, AGO-CPD, October 2023). Key informants explained that a violation of CPA statute constitutes a per se violation, meaning that it is automatically an unfair trade practice under the CPA (personal communication, AGO-CPD, October 2023). Some key informants stated that, as with any CPA per se violation, they would expect consumers to file complaints with the AGO-CPD rather than pursue private legal action (personal communication, AGO-CPD, October 2023). However, some key informants stated concern that since SSB 5171 does not limit legal authority on gendered price discrimination to the AGO,⁴⁸ the bill may lead to an increase in consumers filing litigation related to gendered price discrimination independently from the AGO-CPD, which may increase burden to retailers (personal communication, WRA, October 2023).

Filing a consumer complaint with the AGO-CPD requires consumer resources, time, and awareness of the law. Key informants stated that they generally receive complaints from consumers who are overburdened and frustrated with a particular business or business practice (personal communication, AGO-CPD, October 2023). Key informants also stated that those with less access to resources may be less likely to pursue a legal claim process (personal communications, October 2023).

Under SSB 5171, businesses engaged in a gendered price discrimination case would be ordered to stop engaging in the conduct in question until the court case is resolved.⁴⁸ Key informants representing some Washington State businesses and retailers stated that time, legal costs, and public perception are negative impacts on businesses engaged in a complaint process (personal communications, October 2023). Some key informants shared that opportunities to “cure”⁴⁹ gendered pricing differences outside of court (through education, mediation, refunding money, etc.) may alleviate burden to Washington State businesses (personal communications, October 2023). Key informants from the New York CPD and the Office of the New York State Attorney General (NY AGO) stated that although New York law allows the NY AGO to prosecute legal claims of gendered price discrimination, all 3 complaints received to date have been settled outside of formal court processes (personal communications, October 2023). In these instances, businesses are educated about gendered price discrimination and the New York law, and money has been refunded to the consumer for the good/service in question (personal communication, New York CPD, October 2023).

Key informants shared some mixed information regarding what types of businesses may be most likely to receive a consumer complaint against them. Key informants stated that complaints would likely be issued more frequently against retailers, compared to manufacturers (personal communications, October 2023). This discrepancy may be due to consumers generally interacting more often with retailers and because gathering information against manufacturers may be more challenging than gathering information against retailers (personal communications, October 2023). Key informants shared conflicting information regarding whether SSB 5171 may disproportionately affect businesses owned by women and/or minoritized people or small businesses (personal communications, October 2023). While some key informants stated that large businesses may be more likely to receive a complaint due to their business with manufacturers, other key informants stated that since most retailers in Washington State are small businesses, these small businesses may be more likely to receive a complaint (personal communications, October 2023). Key informants from New York CPD stated that the complaints they have received have been filed against small businesses (personal communication, New York CPD, October 2023). In addition, key informants stated concern that SSB 5171 does not prohibit filing complaints for products sold by the same business during two different time frames or between two different store locations, which may also increase complaints and burden to retailers (personal communication, WRA, October 2023).

After a consumer files a formal complaint with the AGO-CPD, there must be a good faith basis that the case is a violation of the law for the AGO-CPD to bring a case to court (personal communication, AGO-CPD, October 2023). The AGO-CPD has a legal threshold that must be satisfied to serve a legal demand (personal communication, AGO-CPD, October 2023). In addition, the AGO-CPD may consider whether there are several complaints against a specific business before pursuing further legal action (personal communication, AGO-CPD, October 2023). If SSB 5171 were to pass, key informants stated that the AGO-CPD would likely complete a pre-filing investigation where research is conducted before filing an injunction in court (personal communication, AGO-CPD, October 2023). This research process may include discussions with witnesses or conducting depositions (personal communication, AGO-CPD, October 2023).

Under SSB 5171, once the complaint is filed and a pre-investigation conducted, the AGO-CPD may file an injunction with the Washington State Superior Court. The specific court location would be determined by the location of the business serving as the respondent (personal communication, AGO-CPD, October 2023). Key informants stated that filing an injunction would include gathering evidence regarding whether the products in question are substantially similar as well as evidence regarding the reason behind the price differences (personal communication, AGO-CPD, October 2023). The AGO-CPD stated that they might hire expert witnesses to talk about the complexity of a product in question (personal communication, AGO-CPD, October 2023). Input from both the petitioner and the respondent may be included in the injunction (personal communications, October 2023).

The AGO-CPD would then prosecute and seek Superior Court judge confirmation regarding whether they are prosecuting appropriately (personal communication, AGO-CPD, October 2023). During the prosecution process, the AGO-CPD would seek proof that the products in

question are substantially similar and that the reason for a difference in pricing between two products is due to the gender of the person for whom the product is intended (personal communication, AGO-CPD, October 2023). Section 1(2) of SSB 5171 outlines that price differences would be allowed in goods based on any gender-neutral reason, including the amount of time, labor, and materials used to manufacture the goods and difficulty and costs of manufacturing.⁴⁸ In addition, Section 1(4)(c) of SSB 5171 outlines that “substantially similar” means two goods that do not differ in the materials used in production, the intended use, functional design, features, and brand of the good.⁴⁸ The bill does not include criteria that would be used to determine if a price difference is gender-neutral or not. Key informants from the AGO-CPD stated that they do not engage in rulemaking processes and would not conduct a formal process to determine guidelines on what would constitute “substantially similar” products, nor whether the difference in price is due to the gender of the people for whom the goods are marketed (personal communication, AGO-CPD, October 2023). Rather, case determinations would be made on a case-by-case basis through the legal process (personal communication, AGO-CPD, October 2023).

Key informants also provided additional context about ways pricing is generally established, which may influence how respondents would be prosecuted in gendered price discrimination cases. Key informants stated that retailers in Washington State are not solely responsible for pricing of goods (personal communications, September-October 2023). Pricing processes may be unique for each product sold (personal communications, October 2023). Manufacturers create pricing suggestions for products based on external factors, and distributors may transfer products to retailers who often apply additional pricing changes (personal communications, October 2023). Key informants representing some Washington State manufacturers stated that prices are set based on materials, ingredients, labor etc. used in product production (personal communication, AWB, October 2023). Additional factors such as product variation, Manufacturer Suggested Retail Price (MSRP), inventory, and supply and demand may also influence pricing.^{50,51} The AGO-CPD shared how they might prosecute retailers in gendered price discrimination cases. For example, if a retailer sells two substantially similar products marketed to different genders at different prices and the prices were set by an entity that is not that retailer, the AGO-CPD would likely claim that the price difference is a gender-neutral reason (personal communication, AGO-CPD, October 2023). In such a case, the retailer would likely not receive CPA violations and penalties (personal communication, AGO-CPD, October 2023).

In sum, evidence indicates that some consumers, businesses, retailers, and manufacturers becoming aware of consumer protection law change may lead to some gendered pricing violations being filed with the Washington State AGO and some gendered pricing violations being filed through civil litigation.

Would some gendered pricing complaints being filed with the AGO and some legal action on gendered pricing through civil litigation lead to some Washington State retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court?

We have made the informed assumption that some gendered pricing complaints being filed with the AGO and some legal action on gendered pricing through civil litigation may lead to some

Washington State retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court. This informed assumption is based on information from key informants representing staff from the Washington State Superior Judges Association (SCJA), a Washington State attorney, California DOJ, New York CPD, and the AGO-CDP and published research on gendered price discrimination.^{3,8,9,23}

Under SSB 5171, after gendered pricing violations are filed and the prosecution process begins, a Superior Court judge would review the case evidence and declare a case ruling regarding whether the respondent has violated the CPA (personal communication, AGO-CPD, October 2023). Throughout this process, a judge can request additional information from either side of the prosecution (personal communications, October 2023).

Similar to prosecutorial proceedings by the AGO-CDP where case determinations would be made on a case-by-case basis through the legal process, judicial discretion would be applied to each ruling on a case-by-case basis (personal communication, AGO-CPD, October 2023). Key informants stated that they anticipate judges would use Section 1(2) and Section 1(4)(c) of SSB 5171⁴⁸ to inform how they determine if price and product differences are allowed (personal communication, SCJA, October 2023). However, since interpretation of these differences would be up to judicial discretion, the determination regarding whether reasons for price differences are gender-neutral or not may not be uniform across the state and could vary by county (personal communication, SCJA, October 2023). Further, research on gendered price discrimination has used different methodologies to define what constitutes a substantially similar product.^{3,8,9,23} It is possible that judges in Washington State may also use different criteria to define substantially similar products. In addition, although California has not yet received any gendered price discrimination complaints, key informants stated they would expect judicial discretion to create varying legal interpretation should cases reach this stage of the court process (personal communication, California DOJ, October 2023).

If a complaint is determined to be a violation of the law, certain penalties would apply. Penalties for violating the CPA are outlined in [RCW 19.86.140](#).⁵² Penalties include payment of not more than \$125,000 in civil penalty costs for any violation of any injunction within the CPA.⁵² Cases of gendered price discrimination would constitute a per se violation of the CPA, and therefore violations would be an automatic CPA violation (personal communication, AGO-CPD). In 2021, Washington State passed the “Consumer Protection Improvement Act”, which increased the maximum civil penalties for CPA violations from \$2,000 to \$7,500 and extended the penalties to \$10,000 for violations that impact certain communities who have been marginalized.⁷ Gender based pricing qualifies as a practice that impacts a specific group of people based on demographics and the recently amended CPA penalties would apply to these cases (personal communication, AGO-CPD, October 2023). In addition, under SSB 5171, a judge may require direct restitution (reimbursement for financial losses due to the respondent’s actions) to the petitioner. Restitution may be issued independently of other penalties to the respondent (personal communications, October 2023). However, due to judicial discretion it is not possible to determine how restitution may be issued across the state should SSB 5171 pass.

During the court determination process, judges would consider both penalties outlined in RCW 19.86.140 and case law examples (personal communication, AGO-CDP, October 2023). A judge

may use case law to determine what constitutes a violation (personal communication, AGO-CDP, October 2023). For example, in a case of gendered price discrimination involving the sale of razors, every razor purchased may be deemed a violation, or every razor displayed in a store may be deemed a violation (personal communication, AGO-CDP, October 2023). Penalties per violation are then calculated (personal communication, AGO-CDP, October 2023). Given these case-by-case intricacies, it is not possible to determine the total penalties that might be applied to gendered price discrimination cases.

Therefore, once a gendered price discrimination case reaches the Superior Court, judges would use CPA penalties outlined in RCW 19.86.140, case law, and judicial discretion to issue formal penalties rulings. We have made the informed assumption that passage of SSB 5171 may lead to some retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court.

Would some Washington State retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court lead to changes in prices of certain goods?

Is it not well researched how some retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court may impact changes in prices of certain goods. Published literature on gendered price discrimination has found conflicting results on how products are currently priced based on the gender of the intended consumer.^{3,8,9,23,24} While some key informants stated they would expect SSB 5171 to reduce or eliminate differences in prices of certain goods, several key informants stated they would expect certain unintended outcomes on prices, should the bill pass (personal communications, September-October 2023).

Research is conflicting regarding whether gendered pricing discrimination is present in the U.S. and who is most impacted.^{3,8,9,23,24} Key informants representing some Washington State youth and OMWBE stated that they would expect the passage of SSB 5171 to ultimately discourage, decrease, or eliminate gendered price discrimination (personal communications, September-October 2023). However, some research has found that products marketed to women cost more than products marketed to men,^{3,9} some research has found mixed results,^{3,23} and some research has found that once product ingredients and the manufacturer are controlled, there is no evidence of higher prices for products marketed to women, and in some cases, products marketed to men are more expensive.^{8,24}

Some research has found that gendered price discrimination is present across the U.S.^{3,9,23} Researchers have stated that there is both an actual tariff (a tax on goods) component, as well as additional factors that contribute to inequitable price differentials.²⁵ Across the U.S., higher tariffs are applied to clothing marketed to women, compared to clothing marketed to men.²³ The U.S. International Trade Commission found that “[i]n 2015, the tariff burden for U.S. households on [apparel marketed to women] was \$2.77 billion more than on [clothing marketed to men].”⁵³ Lawsuits have been filed against specific manufacturers because of gendered tax markups, claiming that the U.S. had earned \$1 billion in discriminatory tariffs (2007 dollars).²⁵ There are not similar U.S. tariffs on other gendered products, including personal care products.²³

Some key informants representing some Washington State youth stated they have experienced gendered pricing discrimination among certain personal hygiene products (personal communications, September 2023). Additional evidence of gendered price discrimination includes an analysis from the New York City Department of Consumer Affairs.^{3,9} The study includes data on goods including toys and accessories, children and adult clothing, personal care products, and home health products for seniors.⁹ The study includes data on 794 products from more than 91 brands sold at 24 New York City retailers.⁹ Many of the retailers included are national brands which are also available in Washington State (Gap, Carter's, Kmart, Target, Old Navy, CVS, Walgreens, etc.).⁹ The study found that products marketed to women cost about 7% more than similar products marketed to men (7% more for toys and accessories, 4% more for children's clothing, 8% more for adult clothing, 13% more for personal care products, and 8% more for senior/home health care products).⁹ The results show that products marketed to women cost more 42% of the time, while products marketed to men cost more 18% of the time.⁹ Several researchers have critiqued this study.^{8,23,24} Critiques include that only one third of product pairs analyzed include the same leading ingredients and unisex products were analyzed when there was no product marketed to women available to evaluate, which could have introduced issues with comparability.²⁴ Further, the price per ounce or per item was not calculated, leading to potentially inaccurate results.²³

The U.S. Government Accountability Office (GAO) conducted an analysis and found that half of the personal care products analyzed had statistically significantly higher prices for products marketed to women, compared to products marketed to men after controlling for other factors such as "brands, product size or quantity, promotional expenses [...] and other product-specific attributes (e.g., scent, special claims, form)."³ Among shaving gel and non-disposable razors, prices of products marketed to men were significantly higher.³ However, there were no statistically significant differences in prices of disposable razors and mass-market perfumes.³ In addition, some researchers have critiqued this work, stating that GAO analyzed products sold rather than products available and excluded certain common personal care products.²³

Another study examined a range of 3,282 personal care products, including lotions, deodorants, shaving gels/creams, razors, razor cartridges, body sprays, bar soaps, liquid soaps, and shampoos.²³ This study found that overall, more products were marketed to women than men.²³ The research results show that deodorants/antiperspirants and lotion products intended for women were more expensive than those intended for men, while shaving gels/creams intended for men were more expensive than those intended for women.²³ The researchers stated, "[o]ur findings suggest that gender-pricing is not pervasive across products or consistently punitive toward women."²³

In a separate analysis, researchers examined the average price differences between products marketed to men and products marketed to women produced by the same manufacturer among 9 product categories.⁸ The data included products sold in 39,697 stores affiliated with 93 chains across the U.S.⁸ The analysis found that 82% of products analyzed were gendered.⁸ Results show that products marketed to women were more expensive in 4 out of 9 categories, where the other 5 categories did not have statistically significant differences in prices.⁸

Additional research indicates that when a rigorous, “apples-to-apples” approach is taken to comparing substantially similar products, gendered price discrimination might not exist.^{8,24} For example, one study analyzed product ingredients to compare similarity across products.⁸ The researchers stated that manufacturers tend to produce products with different ingredients when they will be marketed to different genders, which makes the majority of products automatically substantially different.⁸ Products in the study were considered substantially similar when the active ingredient and the first 3 to 5 inactive ingredients were identical.⁸ The study results initially show that there were large, statistically significant price differences for products marketed to men and products marketed to women (average of 10.6% higher for products marketed to women).⁸ However, after comparing products with similar ingredients and controlling for the manufacturer, there was no evidence of higher prices for products marketed to women, and in some cases, products marketed to men were more expensive.⁸ The authors stated that the results show how firms engage in second degree price discrimination,⁸ which includes when “consumers self-select into different groups according to their preferences and what they are willing to pay.”³

Additionally, there is little relevant published evidence on price outcomes after similar policies passed in other states. One study found similar results in gendered price discrimination among products in states with and without enacted or pending legislation.⁸

Some information is available regarding how business, retailer, and manufacturer behavior may change, should SSB 5171 pass. Key informants stated that product pricing differs across various products and may involve product transfer from manufacturer to distributor to retailer before reaching store shelves (personal communications, October 2023). While research on gendered price discrimination has described that gender-based product segmentation is driven by manufacturers, retailers may reinforce gendered practices through mechanisms like search filters on websites or by sorting products into gendered aisles in stores.⁸

Evidence indicates that retailers, businesses, and manufacturers that receive CPA violations and/or must provide direct restitution as well as some additional retailers, businesses, and manufacturers may alter the prices of certain goods, based on the gender of the people whom the goods are marketed and intended. Key informants representing Washington State business, retail, and manufacturer associations shared various ways they would expect the passage of SSB 5171 to influence prices. In instances where two gendered products are priced differently, some key informants stated that they would expect businesses to increase costs of the lower priced product (personal communications, October 2023). Other key informants stated that they would expect businesses to decrease certain gendered promotional offers, modify marketing strategies, or stop selling certain gendered products (personal communications, October 2023). Some researchers have also hypothesized that retailers may stop selling versions of products marketed to men under legislation like SSB 5171.⁸

There is conflicting evidence whether gendered pricing discrimination is present and who is most impacted. Some research has found that products marketed to women cost more than those marketed to men,^{3,9} some research has found mixed results,^{3,23} and some research has found that there is no evidence of higher prices for products marketed to women, and in some cases, products marketed to men are more expensive.^{8,24} Some retailers, businesses, and manufacturers

might alter business practices under SSB 5171 by increasing product costs, no longer selling certain products, modifying marketing strategies, or no longer offering certain promotional sales (personal communications, October 2023). Overall, it is not well researched how some retailers, businesses, and manufacturers receiving Consumer Protection Act violation penalties and/or direct restitution orders in Superior Court may impact changes in prices of certain goods.

Taken together, it is not well researched how some retailers, businesses, and manufacturers receiving CPA violation penalties and/or direct restitution orders in Superior Court may impact changes in prices of certain goods. Therefore, the pathway to health and equity could not be completed.

Additional Considerations

This Health Impact Review focused on the most linear pathways between provisions in the bill and health outcomes and equity. Evidence for other potential pathways is discussed below.

Consumer Behavior

Some research is available about consumer choices related to gendered pricing discrimination. First, many common goods are heavily gendered and difficult to price compare. In an analysis of products sold in 39,697 stores affiliated with 93 chains across the U.S., results show that 82% of products analyzed were gendered.⁸ A separate analysis found that highly gendered products, particularly products with simultaneously high perceptions of femininity and masculinity are perceived as highly aesthetic or pleasing, which leads to a higher intent to purchase.⁵⁴

Some authors have suggested that differences in costs of gendered products may be due to women being willing to pay higher prices for certain products than men.²⁵ Research also shows that men are less inclined to purchase products marketed to women, particularly if the product is consumed in public and if the study participant reported higher levels of self-consciousness.⁵⁵ Further, there is variation among women regarding product preferences. For example, women who identify as feminists “report stronger preferences for premium beauty products than nonfeminists.”³⁷

Some have suggested that consumers purchase more economical products by conducting their own price comparisons among gendered products.²⁵ However, evidence suggests that it may not be reasonable to ask consumers to conduct price comparisons of gendered products. Researchers have stated that gender differentiation practices can make price comparisons difficult for the average consumer.²³ One researcher stated, “[c]onsumers make choices based only on what is available in the marketplace.”⁹ For example, gendered products are often sold in different quantities where 2-in-1 products are more likely to be marketed to men and designer or luxury items are more likely to be marketed to women, which can make price comparisons challenging.^{3,23} Key informants representing some Washington State youth stated that it is not reasonable to expect consumers to evaluate complex price comparisons of gendered products (personal communications, September 2023). Additionally, products marketed to women and products marketed to men may be placed in different store aisles and sections, which may make price comparisons challenging. Separating products by assumed gender may also create systemic barriers for consumers to shop for or choose products, especially for gender diverse consumers who may experience systemic and personal biases or discrimination while shopping (personal communications, September 2023).

Lastly, many gendered products do not have a direct comparison product that is marketed to another gender. For example, research that included rigorous methodology to determine whether products were substantially similar found that “[a]cross personal care [products], less than half of gendered [products] in the average store have a comparable product [marketed to another] gender.”⁸ This same analysis found that cost savings were minimal when modifying purchasing behaviors.⁸ The researchers stated that “the average household would save less than 1% by switching to substantially similar products targeted to a different gender.”⁸

In sum, while SSB 5171 may result in some consumers modifying behaviors, it is not possible to determine how consumer behaviors may change, or whether consumers would save money by switching to a product marketed to another gender.

Business Behavior

Some limited evidence is available about business behaviors and choices related to gendered pricing discrimination. Key informants indicated that if SSB 5171 passed, some retailers, businesses, and manufacturers who become aware of the changes to the law may voluntarily change certain business behaviors (personal communications, October 2023). Key informants from California DOJ and New York CPD stated that awareness of gendered price discrimination law might act as a deterrent against gendered price discrimination (personal communications, October 2023).

As discussed above, some retailers, businesses, and manufacturers might alter business practices under SSB 5171 by increasing certain product costs, decreasing certain gendered promotional offers, or modifying marketing strategies. Some research states that retailers may stop selling versions of products marketed to men under legislation like SSB 5171.⁸ However, as previously stated in this HIR, there is limited relevant published evidence of how similar policies from other states affected business behavior, and one study found similar results in gendered price discrimination among products in states with and without enacted or pending prohibitory legislation.⁸ Several key informants stated that changes in business behavior may depend on awareness of the policy, how many businesses engage in legal proceedings and how frequently legal proceedings result in penalties (personal communications, October 2023). Overall, while SSB 5171 may lead to some Washington retailers, businesses, and manufacturers modifying behaviors after becoming aware of consumer protection law changes, it is not possible to determine how business behaviors may change.

Annotated References

1. National Academies of Sciences Engineering, and Medicine. Measuring Sex, Gender Identity, and Sexual Orientation. 2022.

The National Academies of Sciences, Engineering, and Medicine published this report to describe differences between and collection of sex, gender identity, and sexual orientation data. These concepts are interrelated but distinct, and are key ways to measure the demographic diversity of people.

2. Segmenting customers by gender. 2023; Available at: <https://www.markettailor.io/blog/segmenting-customers-by-gender>. Accessed September 8, 2023.

Basic information about gender segmentation marketing is available on this blog post from a website design company.

3. Office United States Government Accountability. Gender-Related Price Differences for Goods and Services. Report to Congressional Requesters. 2018.

The U.S. Government Accountability Office (GAO) published a report on gender-related price differences for consumer goods and services sold in the U.S. The report examines “(1) how prices compared for selected goods and services marketed to men and women, and potential reasons for any price differences; (2) what is known about price differences for men and women for products not differentiated by gender, such as mortgages; and (3) the extent to which federal agencies have identified and addressed any concerns about gender-related price differences.” The authors reviewed and included retail price data, academic studies, federal consumer complaint data, and conducted interviews with federal agency officials, industry experts, and academics. Complaint data was a random sample of gender-related consumer complaints from three databases managed by the Bureau of Consumer Financial Protection (BCFP), the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD). GAO analyzed 10 personal care product categories from Nielsen Company data, and manually collected advertised prices for 16 personal care products and found that average prices were significantly higher for products marketed to women, compared to products marketed to men. The researchers used a multivariate regression model to estimate the effect of gender on price. Half of the personal care products analyzed had statistically significantly higher prices for products marketed to women, compared to products marketed to men after controlling for other factors. The factors controlled included “brands, product size or quantity, promotional expenses [...] and other product-specific attributes (e.g., scent, special claims, form).” Among shaving gel and non-disposable razors, products marketed to men's prices were significantly higher. There were no statistically significant differences in prices of disposable razors and mass-market perfumes. Results were relatively comparable for the 16 manually collected advertised prices; although, data are not available for prices paid. Results show that the intended gender for a product is a significant factor that contributes to price differences. The authors could not determine to what extent price differences were due to gendered bias. While the report accounted for things like size, scents and other costs, data were not available on actual costs to manufacturers. The authors also stated that price differences may be due to differences in consumer willingness to pay certain prices, based on their gender. It may be difficult and time

consuming for consumers to conduct specific price comparisons of gendered products. The report also examines gender price differences reported in studies for mortgages, small business credit, auto purchases, and auto repairs reported in research studies. Three studies did not find evidence of gender price differences after controlling for borrower credit characteristics and other factors, while one study found that women pay more for certain subprime loans. In addition, “one study found that female borrowers defaulted less frequently than male borrowers with similar credit characteristics, and the study suggested that women may pay higher mortgage rates than men relative to their default risk.” These studies had several data limitations, including a lack of controlling for credit scores and are not generalizable. The GOA reports, “the Bureau of Consumer Financial Protection, Federal Trade Commission, and Department of Housing and Urban Development have identified limited consumer concerns based on gender-related pricing differences.” Complaint data from 2012-2017 shows limited consumer complaints about gender related pricing differences. However, the authors also stated that consumers may not be able to easily identify gendered price differences, and that consumers might not know how or where to file a complaint. The authors spoke with New York, California, and Miami-Dade County about their policies protecting against gendered price discrimination and found that the policies increased consumer awareness about the issue, and brought challenges with tracking complaint data. Officials also stated that they rely on residents to submit complaints, rather than government officials seeking out violations.

4. **Price Discrimination 2023; Available at:**
<https://corporatefinanceinstitute.com/resources/management/price-discrimination/>.
Accessed, 2023.

The Corporate Finance Institute provides training and tools for finance and banking professionals. They provide information on their website about price discrimination.

5. **Varian H. R. *Handbook of Industrial Organization*. Vol 1: Elsevier Science Publishers; 1989.**

Varian published information on price discrimination marketing strategies within this book. The chapter on price discrimination includes theory and applications of these marketing strategies.

6. **Unfair Business Practices - Consumer Protection Chapter 19.86 RCW.**

Washington State Title 19 RCW describes business regulation law. Chapter 19.86 RCW is Washington State’s Consumer Protection Act which governs restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices .

7. **AG-request legislation increasing consumer protection penalties for the first time in half a century passes Legislature [press release]. April 21, 2021 2021.**

The Washington State Office of the Attorney General published this press release to announce passage of the Consumer Protection Improvement Act. The passage of SB 5025 (2021) increased the maximum civil penalties for Consumer Protection Act violations.

8. **Moshary Sarah, Tuchman Anna, Vajravelu Natasha. Gender-Based Pricing in Consumer Packaged Goods: A Pink Tax? *Marketing Science*. 2023.**

Moshary, Tuchman, and Vajravelu investigate gender segmentation marketing and price differences for similar products based on who they are marketed to. The study aimed to detect

whether manufacturers engage in second- or third-degree price discrimination. The researchers conceptualize gender-based segmentation as a manufacturer-driven phenomenon, while retailers can reinforce segmentation through mechanisms like search filters on websites or by sorting products into gendered aisles in stores. Prior research found that gendered discrepancies in pricing exist most frequently among personal care categories of products, where products marketed to women cost 13% higher than products marketed to men. In this study, the researchers use 2015 to 2018 national Nielsen Retail Measurement Survey data of grocery, convenience, drugstore, and mass merchandiser sales to examine price differences. The researchers examined the average price differences between products marketed to men and women that were produced by the same manufacturer among the following nine categories: bar soap, body wash, deodorant, hair coloring, razor blades, disposable and non-disposable razors, shampoo, and shaving cream. The data included products sold in 39,697 stores affiliated with 93 chains across the U.S. Data were aggregated and analyzed at the store level. First, the researchers extracted information on gender targeting. The results show that 82% of products analyzed were gendered. The researchers analyzed price patterns on a per product and a per-unit basis, where the per-unit basis accounts for product size. Results of the per-unit analysis show that products marketed to women were more expensive in 4 out of 9 categories, where the other 5 categories did not have statistically significant differences in prices. The researchers also found that married women buy the majority of personal care products for their household, including products marketed to both men and women. For example, 45% of women buy men’s deodorant when their husband is not present. Further, the researchers found “that women primarily purchase items targeted at women, and vice versa for men. As an example, 78% of women and 81% of men exclusively purchase deodorants targeted at their own gender.” The researchers used Syndigo data to also analyze product ingredients in order to compare similarity across products. The researchers considered products substantially similar when the active ingredient and the first three to five inactive ingredients were identical. “Across personal care, less than half of gendered [products] in the average store have a comparable product targeted at the other gender.” The researchers claim that manufacturers tend to produce products with different ingredients for different genders, which make the majority of products automatically substantially different. The study results show that there are large, statistically significant price differences for men’s and women’s products made by the same manufacturer (average of 10.6% higher for products marketed to women). However, when comparing substantially similar products marketed to women and men, where they had similar ingredients and controlled for manufacturer, there was no evidence of higher prices for products marketed to women, and in some cases, products marketed to men were more expensive. The authors stated that the results show how firms engage in second degree price discrimination. The authors found similar results in states with and without enacted or pending pink tax legislation. The researchers stated that “the average household would save less than 1% by switching to substantially similar products targeted to a different gender. The potential savings are much larger—on the order of 9%—if a household were willing, instead, to substitute to products with different gender targeting and different formulations. However, a revealed preference argument suggests that such switching would lower consumer welfare.” Further, the researchers critique previously published research that found significant price differences, stating that this research did not control for product ingredient. The authors replicated and evaluated the New York City Department of Consumer Affairs report and found severe limitations in data and methods, including gender-coding of products. The authors state that one unanticipated outcome of pink tax legislation could be that

retailers stop selling the men's version of specific products. The authors conclude by stating that legislation such as the Pink Tax Repeal Act would not likely meaningfully change average prices in personal care products.

9. de Blasio B. , Menin J. From Cradle to Cane: The Cost of Being a Female Consumer: A Study of Gender Pricing in New York City. New York City Department of Consumer Affairs 2015.

The New York City Department of Consumer Affairs conducted a study of the gendered pricing of goods in New York City. The study includes data on toys and accessories, children's and adult clothing, personal care products, and home health products for seniors. The study includes data on almost 794 products from more than 91 brands sold at 24 New York City retailers. Many of the retailers included are national brands which are also available in Washington State (Gap, Carter's, Kmart, Target, Old Navy, CVS, Walgreens, etc.). Data from both in person and online stores were included. The goal of the research was to estimate price differences for products marketed to men and women, where those products are similar in branding, ingredients, appearance, textile, construction, and/or marketing. The researchers analyzed average price differences found within specific product groups. The researchers also calculated median prices for each product type, to control for outliers in the data, and found median prices mirrored average price trends. The study found that products marketed to women cost about 7% more than similar products marketed to men (7% more for toys and accessories, 4% more for children's clothing, 8% more for adult clothing, 13% more for personal care products, and 8% more for senior/home health care products). The results show that products marketed to women cost more 42% of the time, while products marketed to men cost more 18% of the time. Among toys and accessories, the researchers selected gender neutral toys such as bikes, scooters, backpacks, helmets, arts and crafts, etc. Among these, the largest price discrepancy was in helmets and knee/elbow pads, where products marketed to girls cost 13% higher than products marketed to boys. Across the different types of products studied, children's clothing was generally priced the most similarly, where clothing marketed to girls cost 4% more than clothing marketed to boys. Among adult clothing, clothing marketed to women cost more than that marketed to men in most categories (8% higher overall), but underwear marketed to men cost 29% more. The researchers note that textiles and multiple clothing size variations may result in higher manufacturing costs for women's products. The researchers "made every effort to find nearly identical articles of clothing" and accounted for differences in construction and fabric used. Personal care products had the highest price discrepancy of any product group (13% higher for women) where hair care products were 48% higher and razor cartridges were 11% higher. The authors note that personal care products marketed to women are typically packaged in light-colored, curvy bottles with language like "beauty" included and claims of improving appearances. Personal care products typically marketed to men are in dark colored, boxy bottles marked "for men" and include language about efficiency and product strength. Personal care product price differences were generally due to differences in different quantities sold to men and women. Further, hair care products marketed to men are often sold as a "2-in-1" products but sold separately in products marketed to women, which may mean additional costs to some women consumers. Among senior/home health care products, more products marketed to women cost more than those marketed to men (8% higher overall; 21% higher for personal urinials) but digestive products marketed to men were 5% higher. The authors state that retail prices are set by the retailer, not the manufacturer. The report states that differences in costs are likely mostly due to women

generally being willing to pay higher prices for certain products than men. The authors state that although products may differ from one another in branding, construction, and ingredients, “[c]onsumers make choices based only on what is available in the marketplace.” This study did not estimate an annual financial impact of gender pricing for goods.

10. Price Gender Discrimination Laws. Available at:

<https://www.miamidade.gov/global/economy/consumer-protection/price-gender-discrimination.page#:~:text=Charging%20more%20for%20products%20or,more%20time%2C%20difficulty%20or%20cost>. Accessed 2023.

Miami-Dade County government shares information about County-level price gender discrimination laws. In 1997, Miami-Dade County, Florida passed a law prohibiting charging more for products or services based on a buyer's gender.

11. Commission Vermont Office of the Attorney General and the Human Rights. Guidance on the Use of Gender in Pricing of Goods and Services. 2016

In 2016, Vermont’s Office of the Attorney General and the Human Rights Commission published guidance on the use of pricing of goods and services based on gender. The stated intent of the guidance document was to raise consumer awareness and encourage businesses to eliminate gender-based pricing to come into compliance with Vermont law. The guidance states that gender-based pricing violates Vermont’s Public Accommodations Act, which prohibits discrimination in a place of public accommodation.

12. Pricing goods and services on the basis of gender prohibited, GBS, § 391-U (2020).

In 2020, New York passed GBS, § 391-U which prohibits the pricing of goods and services on the basis of gender.

13. Military Forces Assuring that Treatment of Items by Gender are Uniform and Equal across the Services Act (FATIGUES) Act S. 3016 (2021).

In 2021, the U.S. passed Military Forces Assuring that Treatment of Items by Gender are Uniform and Equal across the Services Act (FATIGUES) Act which required establishment of criteria for military uniforms. The intent of the act was “in part to reduce differences in out-of-pocket costs incurred by enlisted members of the Armed Forces across the military services and by gender within military services.”

14. Price discrimination: gender, CA AB 1287(2022).

In 2022, California passed CA AB 1287, which prohibits the pricing of goods and services on the basis of gender.

15. The Pink Tax: A Litigation and Legislation Update. 2022; Available at:

<https://www.kelleydrive.com/viewpoints/blogs/ad-law-access/the-pink-tax-a-litigation-and-legislation-update>. Accessed October 16, 2023.

A legal firm of over 300 attorneys and other staff, publishes information about specific legal topics. Lawyers from the firm provided an overview of gender-based pricing discrimination case law in this blog post.

16. **AB 1287, Gender Pricing Discrimination Signed by Gov. Newsom. 2022; Available at: <https://californiaglobe.com/articles/ab-1287-gender-pricing-discrimination-signed-by-gov-newsom/>.** Accessed October 17, 2023.
The California Globe published this news article about passage of AB 1287.
17. **California Bill Would Ban Gender-Based Price Discrimination. 2022; Available at. Accessed October 17, 2023.**
Bloomberg Government published this 2022 news article about the passage of California's AB 1287.
18. **California and the Pink Tax (Assembly Bill 1287). 2022; Available at: <http://andychenlaw.com/california-and-the-pink-tax-assembly-bill-1287/>.** Accessed October 16, 2023.
The Law Offices of Andy Chen published information about California gendered pricing legislation in this 2023 blog post.
19. **California "Pink Tax" Law Prohibits Gender-Based Pricing of Consumer Products. 2022; Available at: <https://www.morganlewis.com/pubs/2022/11/retail-dyk-california-pink-tax-law-prohibits-gender-based-pricing-of-consumer-products>.** Accessed October 16, 2023.
Morgan Lewis Law Firm published information about California gendered pricing legislation in this 2022 blog post.
20. **Consumer Alert: NYS Department of State Division of Consumer Protection Reminds Consumers that Gender-Based Pricing is Prohibited in New York State [press release]. August 26 2022.**
New York State Department of State, Division of Consumer Protection issued this consumer alert to highlight that gender-based pricing is illegal in New York State. The alert includes tips to reduce the gender pricing gap and guidance for New York businesses.
21. **Consumer Alert: NYS Division of Consumer Protection Reminds Consumers that Gender-Based Pricing is Prohibited [press release]. December 2 2020.**
New York State Department of State, Division of Consumer Protection issued this consumer alert to highlight that gender-based pricing is illegal in New York State. The alert includes scenarios and guidance surrounding gender based pricing.
22. **New York Department of State Consumer Protection Division. Important Guidance Regarding Gender Neutral Pricing and Services**
The New York Department of State issued guidance after passage of GBS, Section § 391-U in 2020. Guidance includes an overview of the law, how to comply, and who may investigate cases of gendered price discrimination.
23. **Guittar Stephanie Gonzalez, Grauerholz Liz, Kidder Erin N., et al. Beyond the Pink Tax: Gender-Based Pricing and Differentiation of Personal Care Products. *Gender Issues*. 2021;39(1):1-23.**
Gonzalez Guittar et al. conducted a study to examine whether a pricing disparity exists across consumer goods and services based on gender. The authors cite prior research to highlight that

women pay a “gender tax” of \$2,294 per year in 2021 dollars. The researchers critique the NYC Consumer Affairs report, stating that the analysts did not calculate the price per ounce or per item, leading to potentially inaccurate results. The researchers also critique the U.S. Government Accountability Office (GAO) study, stating that they analyzed products sold, rather than products available, and excluded some common personal care products. Further, research and development for product creation, ingredients, and packaging may all influence product cost. While higher tariffs are applied to women’s clothing, there are not similar taxes on personal care products. Of note, New York has initiated a social media campaign to raise awareness about gendered pricing. Prior research has pointed out that gendered norms such as “eliminating sweat and body odor, removing hair from multiple parts of their body, enhancing their appearance with make-up, or undergoing plastic surgery” leads to social pressures for women to purchase personal care products. The researchers in this study examined a range of 3,282 personal care products, including lotions, deodorants, shaving gels/creams, razors, razor cartridges, body sprays, bar soaps, liquid soaps, and shampoos. Data were collected from four major retailers (Wal-Mart, Target, CVS, and Walgreens) and products clearly gendered were included. The research examined both gendered price discrepancies and gendered factors that can create easy-to-miss price discrepancies. The researchers distinguished products with designer brands from mass-marketed brands, as well as enhanced products and medicated or clinical strength products to explore how these factors may also be gendered. The researchers used Person Chi-square tests, independent sample t-tests and multiple regression analyses to determine price differences. Overall, more products were marketed to women than men. The research results show that deodorants/antiperspirants and lotion products intended for women are more expensive than those intended for men, while shaving gels/creams intended for men are more expensive than those intended for women. “Women pay \$1.11 more per ounce of lotion than men [...] Women’s deodorants have a mean price per ounce of \$2.86 compared to men’s at \$2.39. For shaving gels/creams, men pay an average of \$1.66 per ounce of shaving gel/cream compared to \$0.89 per ounce for women’s shaving gels/creams.” Further, there was a significant price difference in deodorants/antiperspirants after controlling for qualities like brand name and medicated products. Similarly, lotions marketed to women cost more than men’s even after controlling for presence of perfume and brand name. Antiperspirants and medicated antiperspirants, as opposed to simple deodorants were statistically significantly more likely to be marketed to women than men. The study also found that men are significantly more likely to be marketed multi-purpose products than women. The analysis also found that gender differentiation for products can make price comparisons difficult for the average consumer. For example, 2-in-1 products are more likely to be marketed to men and designer or luxury items are more likely to be marketed to women. The authors also point out that the three products with significant differences are obviously or visibly associated with gendered expectations.

24. Moshary S., Tuchman A., Bhatia N. Investigating the Pink Tax: Evidence against a Systematic Price Premium for Women in CPG. *Social Science Research Network* 2021.

Moshary and Tuchman analyzed a national dataset of grocery, convenience, drugstore, and mass merchandiser sales in combination with data on product gender targeting to explore whether products targeted to women are more expensive than similar products targeted to men. The authors also provided detail on replication of a 2015 study conducted by New York City (NYC) Department of Consumer Affairs on gendered price discrimination. The researchers expanded the prices included in the NYC analysis to include supermarkets, mass merchandisers,

convenience stores, and drugstores across the U.S. The author's replication analysis excluded 33 products from the NYC data because they could not be matched with national Nielsen data. The analysis found that five out of six categories were priced higher for products marketed to women than to men, which matches the results published in the NYC report. The researchers also compared the product ingredient lists across products marketed to women and men to ensure the analysis was comparing substantially similar products. Results show that only one third of product pairs comprise the same leading ingredients. Further, the researchers point out that the NYC report researchers analyzed unisex products when there was no explicit women's product available to evaluate, which may initiate comparability issues. In this study's main analysis, products sold in 39,697 stores associated with 93 chains across the U.S. were analyzed. The researchers found that products marketed to women are more expensive in some categories, but less expensive in others. The analysis did not find evidence of a systemic pink tax. When the researchers compared products with the same active and inactive ingredients, they found that the product marketed to women was less expensive in the majority (5 out of 6) categories. Further details of this analysis are available in Moshary et al., 2023. The authors concluded that pink tax legislation may not be needed.

25. Dooley Brendan. The Pink Tax: Sexist Pricing or Myth? *Sage Business Cases*. 2020. Dooley published this case study research in Sage Business Cases to explore price differentials between goods marketed for men and women. The article reports that women generally pay more for dry cleaning services, haircuts, and many toiletries. The author cites a 2015 study from New York City's Department of Consumer Affairs which found that in all but 5 of the 35 product categories examined, products marketed to women were priced higher than male products. Products marketed to women cost more 42% of the time while products marketed to men cost more 18% of the time. Generally, toys, accessories, adult clothing, and personal care products marketed to women are more expensive than similar products marketed to men. Some claim that different prices for substantially similar products is rooted in sexism, while others claim that the differences are due to greater production costs. The author pointed out that governments may add taxes on goods being produced by manufacturers from other countries in an effort to protect local producers. There are also some products marketed to men that are more expensive than those marketed to women. Tax on woven wool shirts marketed to men is double the amount applied to woven wool shirts marketed to women. In contrast, taxes are higher on overalls marketed to women, compared to those marketed to men (14% and 9% comparatively). There have been lawsuits against specific manufacturers because of gendered tax markups, claiming that the US had earned 1 billion dollars in discriminatory tariffs (2007 dollars). There is both an actual tax component, as well as additional factors that contribute to the inequitable price differentials. The authors stated, "[u]ntil this issue is settled, companies such as Columbia will be collecting an additional cost from consumers and will then pass those proceeds to the government in the form of tax payments." The report also cites Consumer reports to highlight that pharmacies charge more for specific hygiene products, medication, and razor blades marketed to women, compared to the same products marketed to men. The author also points out that consumers make various purchasing choices and raises the perspective that women could purchase products marketed to men if they so chose. They report that women drive 70-80% of all consumer spending. The researcher states that "the market for women's razors is more competitive due to females being more discriminating consumers than their male counterparts." One study states that consumer preferences are the main reason behind the different prices. The report also summarizes that

differences in prices of some products may appear to be gendered but are actually gender neutral. For example, one shave cream marketed to women is designed with a rust-proof bottom, with a tall and thin can, and with fragrance. These features are not present in the shave cream product marketed to men. The authors state that regarding razors, men typically shave more often and on facial hair, while women shave on a wider range of body areas. The products are designed differently (efficient blades compared to dexterity and moisture strips of the blades) according to sex. The author concludes by saying the issue of gendered price discrimination is at the societal level, rather than at the economic level.

26. Crawford B. Pink Tax and Other Tropes. *Yale Journal of Law and Feminism*. 2023;34(1):88-175.

Crawford describes the ways in which slogans referring to figurative taxes have been used and should potentially be avoided in academic and law literature. The “nanny tax”, “death tax”, “soda tax”, “Black tax”, and the “pink tax” are explored in this paper. The author makes a descriptive, an empirical, and a normative claim in the paper to urge discretion when using “tax” in policy and legal language. The author points out that taxes may be compulsory formal levies or may be burdens or oppressions that may be similar to taxes. The researcher also provided a content analysis of multiple datasets to examine the ways specific tax slogans have been used. The author wrote, “[t]he resulting preliminary hypothesis is that tax tropes that deploy suggestive modifiers to describe literal taxes are more effective than those that allude to identity axes associated with figurative taxes.” “Pink tax” and “Black tax” generally refer to different experiences based on identity. The author also expands on use of the “pink tax”, which has been used to describe the gender wage gap, gender-based pricing differences in consumer goods or services, disproportionate expenses, and unequal time burdens stereotypically influencing people with “feminine” appearances and those who are responsible for households or caregiving. Some have summarized the “pink tax” as the “costs associated with being a woman.” One example is increased costs in transportation due to concerns with personal safety. Another example includes the labor and roles traditionally taken on by women. A summary on the gender wage gap data and highlights of LGBTQ+ wage inequities are provided in the article. The researcher states that the only version of the “pink tax” in which a tax shorthand has been successful has been the tax on menstrual products (e.g. “tampon tax”). However, there are many women and non-binary people who do not menstruate, and the “pink tax” shorthand to describe the tax on menstrual products does not adequately acknowledge the nuances at play. Some scholars argue that the focus should be on men who pay less for goods and services and suggest calling this phenomenon the “blue discount”. Crawford argues that “pink tax” language has not proven useful for narrowing or closing the gender wage gap.

27. Statistics U.S. Bureau of Labor. Women’s Earnings in Washington – 2021. 2023.

The United States Bureau of Labor Statistics reports estimates on women’s wages, salaries and earnings using data from the Current Population Survey. Data are provided on national and Washington State-specific wages. Data show that in 2021, across the U.S., “women earned \$912 per week, or 83.1[%] of the \$1,097 median for men.” Washington State data from 2021 show that women in Washington earned less than men at a higher rate than women across the U.S.

28. Labor U.S. Department of. 5 Fast Facts: The Gender Wage Gap. 2023.

The U.S. Department of Labor Blog includes fast fact data on various topics. This entry includes data on the gender wage gap and median weekly earnings by sex and educational attainment. Data show that men receive higher median weekly earnings than women regardless of educational attainment.

29. Research Institute for Women's Policy. The Economic Status of Women in Washington. Status of Women in the States. 2018.

The Institute for Women's Policy Research published this fact sheet on the economic status of women in Washington. The brief includes data on the gender pay gap, the impacts of unequal pay, and wages by race and ethnicity. The Institute ranked Washington State 17th in the U.S. for women's employment and earnings measures. One linear projection that used Decennial Census data from 1960 through 2000 and 2001-2015 American Community Survey microdata found that women in Washington will earn equal pay in the year 2070. Researchers have estimated that the difference between women's and men's annual earnings would pay for 3.4 years of community college tuition in Washington State.

30. Statistics U.S. Bureau of Labor. Highlights of women's earnings in 2021.2023.

The U.S. Bureau of Labor Statistics published this report of women's earnings using 2021 Census data. Earnings by age, race and ethnicity, educational attainment, occupation, and additional factors are presented. Data indicate, “[white women] (\$925) earned 81[%] as much as [Asian women] (\$1,141), [Black women] (\$776) earned 68[%], and [Hispanic women] (\$718) earned 63[%]. Among men, these earnings differences were even larger: White men (\$1,125) earned 77[%] as much as Asian men (\$1,453), Black men (\$825) earned 57[%] as much, and Hispanic men (\$820) earned 56[%].” Differences in earnings between men and women were highest among Asian people and white people, where Asian women earned 79% as much as Asian men, and white women earned 82% as much as white men.

31. Center National Women's Law. Trans, Queer & Underpaid: Emerging LGBTQI+ Pay Gap Data.2023.

The National Women's Law Center published this fact sheet to highlight data on LGBTQI+ pay gaps in the U.S. The fact sheet cites 2022 Human Rights Campaign report and Bureau of Labor Statistics Current Population Survey data. People who are LGBTQ+ experience wage gaps, when compared to their straight, cisgender counterparts. A 2022 Human Rights Campaign study found that LGBTQ+ full time workers typically make 90% of wages made by workers of all sexual orientations and gender identities, while women in the LGBTQ+ community earn 87% of wages earned by all workers. The gender gap widens for transgender people, where transgender men earn 70% and transgender women earn 60% of what all workers earn.

32. Center Pew Research. The Enduring Grip of the Gender Pay Gap.2023.

The Pew Research Center reports on the gender wage gap in the United States. Differences based on gender and parenthood are described. Data trends over time are included, as well as recommendations for next steps to narrow the gender pay gap. When comparing across racial and ethnic groups, Black and Hispanic women only earn 70% as much as white men, and Hispanic women earned 65% as much.

33. **Women of Color and the Wage Gap. 2021; Available at: <https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/>. Accessed, 2023.**

The Center for American Progress is an independent, nonpartisan policy institute. In this article, the Center uses U.S. Census data to describe the wage gap among women of color. Data show that for every \$1 earned by white, non-Hispanic men, Hispanic women earned 57 cents, Black women earned 64 cents, and white non-Hispanic women earned 79 cents. While data indicate the Asian women earned \$1.01 for every \$1 earned by white non-Hispanic men, disaggregated data show wide variation in the wage gap. Disaggregated data show that for every \$1 earned by white, non-Hispanic men, Chinese women earned \$1.03, Vietnamese women earned 63 cents, Nepali women earned 54 cents, and Burmese women earned 52 cents.

34. **Research Institute for Women's Policy. State by State Earnings for American Indian and Alaska Native Women: Wage Gaps Across the States.2020.**

The Institute for Women's Policy Research published this research brief of wage earnings for American Indian and Alaska Native women in the U.S. Data from the Census show American Indian and Alaska Native (AIAN) women earn 59 cents for every dollar paid to white non-Hispanic men, for a wage gap of 40%. A breakdown of median annual earnings by state are provided where data are available.

35. **Washington Equal Pay and Opportunities Act, (2019).**

Washington State Chapter 49.58 RCW prohibits wage discrimination due to gender.

36. **Bureau United States Census. Quick Facts Washington. 2022.**

The U.S. Census Bureau published this overview of population estimates for Washington State. Data include basic statistics on age and sex, race, housing, education, etc.

37. **Harrold Mycah L., Miller Chadwick J., Perkins Andrew W. Pink tasks: Feminists and their preferences for premium beauty products. *Psychology & Marketing*. 2023;40(8):1658-1671.**

Harrold, Miller, and Perkins conducted 4 studies to explore product consumption habits around daily routine practices. The researchers examined ways that feminist and nonfeminist consumers approach beauty work tasks. Results indicate that feminists reported higher preferences for premium beauty products, compared to nonfeminists. The research indicates that feelings of empowerment and self-determination drive motivations for premium products. A discussion on consumer choice and social standards and expectations is provided.

38. **University Washington State. Holiday Retail Report 2022.2022.**

Washington State University, Carson College of Business publishes an annual report of holiday retail data results. Data are reported from surveys of consumers across the Pacific Northwest (PNW) to examine how behavior and attitudes shift around the holiday shopping season. Respondents include those located in Washington, Oregon, and Idaho, ages 18 and older. The survey includes 1,000 consumers and "an additional oversample of 750 respondents from metro areas Seattle, Portland, and Spokane/Eastern Washington." The report includes key findings.

39. Department Washington State Employment Security. Establishment Size Report. 2022.

Washington State Employment Security Department publishes annual establishment size data. These data provide a count of establishments and their size class based on their number of employees, for each Washington industry and for each county. First quarter data from the Quarterly Census of Employment and Wages (QCEW), Enhanced Quarterly Unemployment Insurance are used to build the establishment size dataset.

40. Federation National Retail. The Economic Impact of the US Retail Industry.2020.

The National Retail Federation published this 2020 report on the economic impact of the U.S. retail industry. The report includes definitions of the industry, state and national data, and appendices with additional detail. Data include employment and revenue attributable to retail, as well as types of retail industries. Data sources include Regional Economic Accounts, Quarterly Census of Employment and Wages, Nonemployer Statistics, Annual Capital Expenditure Survey data. Estimates of direct and indirect economic impacts are calculated.

41. Retail Facts & Figures. 2023; Available at: <https://washingtonretail.org/news/retail-facts-figures/>. Accessed, 2023.

The Washington Retail Association is an association representing retailers in Washington State. The association represents over 3,500 storefronts across the state, and members include wholesalers, dealers, professional services and mall owners/operators. The association's website includes data on Washington State retailers.

42. Washington Manufacturing Facts. 2023; Available at: <https://nam.org/state-manufacturing-data/2022-washington-manufacturing-facts/>. Accessed, 2023.

The National Association of Manufacturers (NAM) represents 14,000 member companies across the U.S. The Association's website includes data specific to Washington State manufacturers, including employment and economic impacts.

43. Washington State Manufacturing Directory. Available at: <https://www.impactwashington.org/made-in-washington?c=1885&category=View%20All>. Accessed, 2023.

Impact Washington is a non-profit organization designed to support Washington manufacturers. The organization provides consulting support and maintains a voluntary directory of Washington State manufacturers.

44. Northwest Justice Project. 2023; Available at: <https://www.washingtonlawhelp.org/>. Accessed.

Washington Law Help is an online resource that provides Washington State-specific information about legal topics and ways to get legal help.

45. File a Consumer Complaint. 2023; Available at: <https://dos.ny.gov/file-consumer-complaint>. Accessed 2023.

The New York Department of State, Division of Consumer Protection manages complaints received from consumers about businesses. Consumers may file complaints of gendered price discrimination through this mechanism.

46. **Consumer Complaint Against A Business/Company. 2023; Available at: <https://oag.ca.gov/contact/consumer-complaint-against-business-or-company>. Accessed, 2023.**

The State of California Department of Justice houses this consumer complaint form, where consumers may file various complaints against businesses or companies.

47. **Former Governor Cuomo Reminds New Yorkers "Pink Tax" Ban Goes into Effect Today [press release]. September 30 2020.**

New York State Department of State, Division of Consumer Protection issued this consumer alert to highlight that gender-based pricing is illegal in New York State. The alert was published the day that the prohibition went into effect and includes ways to report gendered price discrimination.

48. **Committee Washington Senate Law and Justice. Substitute Senate Bill 5171. 2023.**

Substitute Senate Bill 5171 was introduced in the Washington State Legislature in 2023. Provisions include prohibition of price differences of two substantially similar goods due to the marketed and intended gender of the consumer.

49. **Right to Cure definition. Available at: <https://www.lawinsider.com/dictionary/right-to-cure>. Accessed October 2023.**

Law Insider provides legal resources related to drafting and negotiating contracts. A definition of the "Right to Cure" is provided: the legal provisions in a repayment plan of an individual in default. Several examples of "Right to Cure" are provided.

50. **Factors that Affect Pricing Decisions. Principles of Marketing Available at: <https://open.lib.umn.edu/principlesmarketing/chapter/15-2-factors-that-affect-pricing-decisions/>. Accessed, 2023.**

The University of Minnesota published this overview of various factors that affect pricing decisions. Factors such as competition, economy, government regulations, and marketing mix are taken into account in pricing decisions.

51. **Manufacturer's Suggested Retail Price (MSRP): Meaning. 2023; Available at: <https://www.investopedia.com/terms/m/manufacturers-suggested-retail-price-msrp.asp>. Accessed, 2023.**

This webpage provides an overview of Manufacturer's Suggested Retail Price (MSRP) and how MSRPs determine pricing of products.

52. **Civil Penalties, RCW 19.86.140 (2021).**

Washington State RCW 19.86.140 outlines penalties for violating the Consumer Protection Act.

53. **Gailes A., Gurevich, T., Shikher, S., Tsigas, M. . Gender and Income Inequality in the United States Tariff Burden2018. Located at: Economics Working Paper Series**

Gailes, et. al. published this economics working paper on gender and income inequality in the United States, including a specific exploration of the gendered tariff burden. The researchers state that there are various consumer patterns and tariff burdens across consumer groups. The

results show that "the tariff burden was a nearly constant 0.25[%] across all income deciles, meaning that tariffs act as a flat consumption tax." These results suggest that tariff rates disproportionality affect people with lower income. Further, among apparel products, "the majority, 66%, of the [total] tariff burden was from women's apparel products." The researchers found that "[i]n 2015, the tariff burden for U.S. households on women's apparel was \$2.77 billion more than on men's clothing."

54. **van Tilburg Miriam, Lieven Theo, Herrmann Andreas, Townsend Claudia. Beyond "Pink It and Shrink It" Perceived Product Gender, Aesthetics, and Product Evaluation. *Psychology & Marketing*. 2015;32(4):422-437.**

van Tilburg, Lieven, and Herrmann investigated product aesthetics and gender, and their influences on consumer behavior. The researchers found that certain masculine and feminine physical characteristics impact consumer choices. The research investigates product form, color, and material. Results indicate that consumers prefer gendered products, particularly when there are both strong masculine and feminine characteristics. The researchers also discuss managerial implications and guidelines.

55. **White K., Dahl D. W. To Be or Not Be? The Influence of Dissociative Reference Groups on Consumer Preferences. *Journal of Consumer Psychology*. 2006;16(4):404-414.**

White and Dahl explore "the effects of dissociative reference groups on consumer preferences" through 3 studies included in this paper. Dissociative reference groups are groups in which an individual avoids being associated with. Results indicate that males were less inclined to choose a product associated with a female reference group, compared to a neutral product. Males were less likely to choose a product associated with a female reference group when product consumption occurred in public rather than private, and when they exhibited more self-consciousness.