

## Client Alert

### New York Law Forbids Gendered Pricing

November 19, 2020

Recently, New York enacted a new law against gendered pricing that was included as a key component of the state's Fiscal Year 2021 budget and Governor Cuomo's 2020 Women's Agenda. In a press release announcing the law, Governor Cuomo states, "By abolishing the pink tax, women and girls will no longer be subject to harmful and unfair price discrimination and any businesses who fail to put an end to this despicable practice will be held accountable." Other state actors are quoted as lauding the new law and comparing the "pink tax" to gender discrimination against women.

The new law, GBS, § 391-U, which went into effect on September 30, 2020, prohibits charging different prices for goods or services that are "substantially similar" but are marketed to different genders. The law applies at all levels of the supply chain. Goods under the law are defined broadly as "any consumer product used, bought, or rendered primarily for personal, family or household purposes." "Substantially similar" goods are defined as those that "exhibit little difference in the materials used in production, intended use, functional design and features, and brand."

Similarly, services under the law are described as "any consumer services used, bought or rendered primarily for personal, family or household purposes." Services that are "substantially similar" are those "that exhibit little difference in the amount of time delivering, difficulty, and cost in providing the service." Consumers may ask those who provide services for a price list in advance.

The gendered pricing law could impact a wide range of goods and services, including but not limited to:

- Personal care products such as razors, deodorant, toothbrushes, and body wash
- Gendered toys and children's clothing
- Adult clothing of the same brand
- Dry cleaning, tailoring, laundry services, and haircuts

The law could also potentially be read to cover sellers like car dealerships or financial service providers if they sell their products or services at different prices to women and men.

On the other hand, businesses whose pricing is based on difficulty, cost incurred, time, labor, or materials involved in manufacturing a good or offering a service, or any other gender-neutral reason for a price differential, should not be concerned about running afoul of the new law. However, these businesses should ensure they are able to document these reasons for the price difference in case they become subject to investigation.

California already has an analogous law, the [Gender Tax Repeal Act](#), which prohibits price discrimination for similar services based on gender. However, this law is limited to services and does not cover goods. California's law also requires certain businesses, such as hair salons, tailors, and dry cleaners, to clearly and conspicuously post pricing lists for their services, while New York's law only recommends such disclosures and requires businesses to provide customers with pricing lists upon request.

The press release states that those who violate the gendered pricing law are subject to injunctive relief, consumer restitution, and fines of up to \$250 for the first violation and up to \$500 for any subsequent violation. To avoid liability under this law and becoming subject to the accompanying fines, any business which sells similar goods or services to different genders should carefully ensure that its pricing system does not violate the law against gendered pricing and that it can support pricing differences with documentation showing legitimate reasons for such variance. Additionally, businesses should be on notice that other states may follow in New York's footsteps and enact similar laws against gendered pricing of goods and services.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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