



June 15, 2016

The Honorable Mark Stone
Chair, Assembly Judiciary Committee
1020 N St, Room 104
Sacramento, CA 95814

Dear Chairman Stone:

RE: SB 899 (Hueso) as amended 6/13/16 - OPPOSE

The undersigned organizations **oppose SB 899 (Hueso)**, which creates a host of unintended consequences that severely disrupt the pricing of consumer goods within the current market system. Price determinations are fluid and affected by numerous factors. SB 899 erroneously correlates the pricing of consumer goods with the gender for which a product is designed and forces businesses to price all gender-specific products the same, despite inherent product differences.

SB 899 will not decrease discrimination.

Discrimination is defined as the act of denying rights, benefits, justice, equitable treatment, or access to facilities available to all others, to an individual or group of people because of their race, age, gender, handicap or other defining characteristic. The global marketplace offers a variety of products available for purchase by *any* individual or group regardless of race, age, gender, handicap, or other defining characteristic. Furthermore, no single individual is forced to purchase a specific product based on their race, age, gender, handicap or other defining characteristic. SB 899 does not address discrimination but rather disrupts the complex supply chain that exists today, making it difficult to coordinate the pricing of goods and creating tremendous liability exposure. Regardless of gender, consumers pay the same price.

SB 899 will cause price fixing and will interrupt the natural process of supply and demand – the basis of the market system.

By forcing retailers to artificially price products inconsistent with their true market value, SB 899 will lead to price fixing, which could negatively impact the market by interfering with supply and

demand. Consumer demand drives the supply of goods and fixing prices, whether too high or too low, could potentially reduce investment and the entry of new products into the market. In some cases, this could encourage an oversupply of products that are not in demand, or for lower priced products, a shortage because the costs to manufacture those products would not be recouped.

SB 899 will lead to costly, often frivolous litigation against retailers.

While we appreciate the author's efforts to make SB 899 more workable via recent amendments, the bill still puts retailers at risk of costly litigation. SB 899 is enforceable through the Unruh Civil Rights Act, under which each successful lawsuit can yield an award of up to \$4,000 per instance of deficiency, plus attorney fees. Under this bill, thousands of products would be subject to the scrutiny of the legal system, even products with price differences ranging from a penny to several dollars. Further, the applicability of the exceptions to this bill would have to be determined in court, even if there are completely justified price differences. In our competitive market system, businesses must quickly respond to demand to remain afloat. SB 899 hinders this process and dramatically expands our exposure to liability.

SB 899 does not consider that the pricing of consumer goods can be affected by a combination of multiple variables.

Although this bill allows for gender-neutral differences in products such as labor, materials, or tariffs, it does not encompass all of the different elements that determine how a product is priced. Factors such as competitor pricing, brand, country of origin, cost of production, availability of supply, promotional campaigns, cost of design, cost of marketing, cost of packaging, merchandising, method of manufacture, and size are just a few examples of what causes price differences. SB 899 also does not consider sale events designed to move inventory, customer loyalty reward programs, and the online marketplace that adheres to its own pricing processes -- all conditions that result in product price differences.

SB 899 poses multiple challenges with respect to determining which products are similar vs. gender-specific.

SB 899 provides that products are of a "substantially similar or like kind" if they share the same brand, functional components, and 90% of the same materials or ingredients. Products cannot be easily measured for our respective industries as the bill currently proposes. "Similarity" is more easily understood in connection with services like dry cleaning a man's or woman's shirt, or providing a haircut to a woman or man. When applied to goods, there are endless ambiguities. Are all shirts similar or only shirts with the same design, construction, material, place of production, or size? Would the method of manufacture (e.g. Hand Made in Napa Valley vs. Machine Made in China) or a "prestige" location of manufacture (e.g. Made in Italy) be a factor?

This bill also offers no guidance as to what goods are considered gender-specific and therefore subject to the law. For example, would a scented soap be considered a "women's product" requiring price equality among all other soaps, including unscented soaps? Is a pink towel necessarily a "female" product? The requirement to gender-identify all products seems like a step backward, especially as our society works to eliminate gender bias.

For these reasons, we must **OPPOSE SB 899 (Hueso)**.

Sincerely,

American Apparel and Footwear Association
California Retailers Association
Civil Justice Association of California
Consumer Specialty Products Association
Direct Marketing Association
Grocery Manufacturers of America
National Federation of Independent Business
TechNet
Toy Industry Association

cc: Members, Assembly Judiciary Committee
The Honorable Ben Hueso