

AMENDED IN ASSEMBLY JANUARY 8, 2018

AMENDED IN ASSEMBLY MAY 3, 2017

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1576

Introduced by Assembly Member Levine

February 17, 2017

~~An act to amend Section 51.6 of the Civil Code, relating to discrimination.~~ *An act to add Chapter 6 (commencing with Section 1707) to Part 6 of Division 2 of the Labor Code, relating to modeling agencies.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1576, as amended, Levine. ~~Gender discrimination: pricing: goods.~~ *Modeling agencies: licensure: models: employees.*

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Existing law establishes the Department of Industrial Relations to, among other things, foster, promote, and develop the welfare of the wage earners, to improve their working conditions, and to advance their opportunities for profitable employment.

Existing law provides for the licensure and regulation of talent agencies, as defined, by the Labor Commissioner. Existing law requires moneys collected for licenses and fines collected for violations of these provisions to be paid into the State Treasury and credited to the General Fund.

This bill would require a person engaging in the occupation of a modeling agency, as defined, to be licensed by the Labor Commissioner under the licensing provisions that apply to talent agencies.

The bill would require all employees of a licensee who work with artists, within 30 days of being hired, and all artists represented by a licensee, within 30 days of engaging a talent service, to receive sexual harassment prevention and health standards training in a manner approved by the Labor Commissioner, and once per calendar year thereafter. The bill would define terms, including “artist,” “licensee,” “model,” and “modeling agency” for purposes of these provisions and would make related findings.

The bill would require the Occupational Safety and Health Standards Board to, no later than June 30, 2019, and in consultation with accredited specialists in the prevention and treatment of eating disorders, adopt an occupational safety and health standard for models, as specified.

~~Existing law, the Gender Tax Repeal Act of 1995, prohibits a business establishment from discriminating on the basis of gender with respect to the price charged for services of similar or like kind. Existing law excepts from this prohibition price differences based specifically upon the amount of time, difficulty, or cost of providing the services.~~

~~This bill would amend the Gender Tax Repeal Act of 1995 to additionally prohibit a business from discriminating with respect to the price charged for the same, or substantially similar, goods because of the gender of the targeted user of the good, as specified. The bill would authorize specifically the Attorney General, a district attorney, or a city attorney to prosecute a civil action for preventive relief for a violation of the Gender Tax Repeal Act of 1995.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6 (commencing with Section 1707) is
2 added to Part 6 of Division 2 of the Labor Code, to read:

3
4 CHAPTER 6. MODELING AGENCIES

5
6 1707. (a) Professional fashion models face pervasive and
7 hazardous occupational demands to maintain extreme and

1 *unhealthy thinness. These occupational pressures create a*
2 *dangerous work environment. Models experience a substantially*
3 *elevated risk of eating disorders and other severe health problems*
4 *associated with starvation.*

5 *(b) The majority of models enter the industry as minors, making*
6 *them especially vulnerable to mistreatment and to the physical*
7 *and psychological damage caused by eating disorders. Women*
8 *working as professional fashion models are more likely to have a*
9 *diagnosis of anorexia nervosa, dangerously low body mass index,*
10 *and amenorrhea, which is a serious medical indicator of hormonal*
11 *dysregulation that can have negative health consequences for life.*

12 *(c) As with all workers, professional fashion models are entitled*
13 *to safe working conditions. The time, place, and means of the*
14 *services provided by professional models are typically controlled*
15 *by the company paying their compensation. Many models,*
16 *including minors, are wrongly treated as independent contractors*
17 *and currently do not receive workplace protections. Clarifying*
18 *their classification as employees of the companies paying their*
19 *compensation will enhance workplace protections.*

20 *(d) The impact of the fashion industry on health reaches far*
21 *beyond the hazardous occupational conditions that professional*
22 *models endure. Through its dominant presence in the mass media*
23 *and pervasive influence on setting cultural standards for apparel,*
24 *particularly for girls and young women, the fashion industry helps*
25 *to define, transmit, and reinforce an unrealistic standard of*
26 *thinness, a well-documented risk factor for eating disorders.*

27 *(e) Scientific research has shown that viewing media images of*
28 *extremely thin models leads to body dissatisfaction in adolescent*
29 *girls and young women, especially those who already have*
30 *heightened vulnerability to eating disorders. In addition, scientific*
31 *studies have shown that body dissatisfaction in adolescence is a*
32 *strong indicator that a young person may develop an eating*
33 *disorder.*

34 *(f) Improving working conditions to reduce excessive thinness*
35 *among professional models is likely to lead to healthier images of*
36 *models' weight. This change in media portrayals of models' weight*
37 *may help to achieve a larger societal value in making media images*
38 *more healthful and less damaging to girls' and young women's*
39 *body image, ultimately reducing their risk for eating disorders.*

1 (g) *In 2017, hundreds of artists came out with reports of sexual*
2 *harassment and sexual assault in the entertainment industry. The*
3 *reports are horrendous and indicate a culture of harassment that*
4 *requires workplace education and training to change that culture.*
5 *Some reports involve criminal assault and acts involving minors.*

6 (h) *It has been widely known in the entertainment industry that*
7 *certain specific individuals have a history of sexual harassment.*
8 *So much so that an Academy Award winner was the subject of a*
9 *joke about sexual harassment during public comments at an awards*
10 *ceremony. That individual has more than 70 complaints of*
11 *harassment.*

12 (i) *Talent agencies often ignore harassment and send artists to*
13 *work with individuals who have a history of harassment without*
14 *warning the artist. Several artists have recently publicly called*
15 *out the talent agencies for a lack of support and reported that some*
16 *talent agencies have retaliated against artists who have spoken*
17 *out about harassment.*

18 1707.1. *For purposes of this chapter, the following definitions*
19 *shall apply:*

20 (a) *“Artist” has the same meaning as that term is defined in*
21 *Section 1701.*

22 (b) *“License” means a license issued by the Labor*
23 *Commissioner for a talent agency to carry on the business of a*
24 *modeling agency under Chapter 4 (commencing with Section*
25 *1700).*

26 (c) *“Licensee” means a modeling agency that holds a valid*
27 *license as a talent agency under Chapter 4 (commencing with*
28 *Section 1700).*

29 (d) *“Model” means an artist under Section 1701 covered under*
30 *Wage Order 4 of the Industrial Welfare Commission who, in the*
31 *course of his or her occupation, performs modeling services for,*
32 *or who consents in writing to the transfer of his or her legal right*
33 *to the use of his or her name, portrait, picture, or image for*
34 *advertising purposes or for the purposes of trade directly to, a*
35 *retail store, a manufacturer, an advertising agency, a*
36 *photographer, a publishing company, or a modeling agency.*

37 (e) *“Modeling agency” means a person that facilitates an*
38 *employment opportunity as defined in Section 1701 for a model*
39 *and that holds a valid license under Chapter 4 (commencing with*
40 *Section 1700).*

1 (f) “Modeling services” means the appearance by a model in
2 photographic sessions or the engagement of a model in runway,
3 live, filmed, or taped performances requiring him or her to pose,
4 provide an example or standard of artistic expression, or to be a
5 representation to show the construction or appearance of some
6 thing or place for purposes of display or advertising.

7 1707.2. (a) The Labor Commissioner shall approve a sexual
8 harassment prevention and health standards training program
9 and post on her or his Internet Web site a list of vendors who
10 provide sexual harassment prevention and health standards
11 training under this section. The Labor Commissioner may approve
12 different programs specifically designed to meet the purposes of
13 subdivisions (b) and (c). An approved sexual harassment
14 prevention and health standards training program shall include
15 but not be limited to the following:

16 (1) Health standards provided for in Section 1707.4.

17 (2) Types of harassment.

18 (3) Workplace discrimination.

19 (4) Workplace safety issues related to physical and emotional
20 health.

21 (5) How to identify and prevent inappropriate behavior.

22 (6) Worker rights and protections provided in law.

23 (7) Potential liabilities for those who engage in, encourage,
24 facilitate, or ignore sexual harassment and failure to comply with
25 health standards.

26 (8) The potential responsibilities of a licensee to advise and
27 represent the best interests of artists relative to sexual harassment
28 prevention and health standards. This includes, but is not limited
29 to, responding to complaints by artists, refusing to send artists to
30 potentially unhealthy situations, reporting accusations of assault
31 to law enforcement, helping artists recognize and identify sexual
32 harassment and unhealthy activities.

33 (9) Meet the requirements of Section 12950.1 of the Government
34 Code regardless of the number of employees.

35 (b) All employees of a licensee who work with artists, either
36 directly or indirectly, shall receive training in a manner approved
37 by the Labor Commissioner under subdivision (a) within 30 days
38 of being hired and once per calendar year thereafter. For purposes
39 of this subdivision, “employee” includes all those acting as
40 representatives of licensees. The training shall be in the language

1 *understood by the employee. The person may comply with this*
2 *language requirement either by providing the training in that*
3 *language or by having the training interpreted for the employee*
4 *in the language that he or she understands.*

5 *(c) All artists represented by a licensee shall receive training*
6 *in a manner approved by the Labor Commissioner under*
7 *subdivision (a) within 30 days of engaging a talent service and*
8 *once per calendar year thereafter. The training shall be in the*
9 *language understood by the artist. The person may comply with*
10 *this language requirement either by providing the training in that*
11 *language or by having the training interpreted for the artist in the*
12 *language that he or she understands.*

13 *(d) (1) The licensee shall annually report to the Labor*
14 *Commissioner, in a manner prescribed by the Labor Commissioner,*
15 *the total number of employees and artists trained under*
16 *subdivisions (b) and (c) in the previous calendar year and the*
17 *complete list of all materials or resources utilized to provide the*
18 *training.*

19 *(2) The Labor Commissioner shall annually aggregate the data*
20 *provided by licensees under this subdivision and publish on the*
21 *Internet Web site of the Labor Commissioner the total number of*
22 *employees and artists trained in the previous calendar year.*

23 *1707.3. A person shall not engage in or carry on the occupation*
24 *of a modeling agency without first procuring a license under*
25 *Chapter 4 (commencing with Section 1700).*

26 *1707.4. (a) The Occupational Safety and Health Standards*
27 *Board shall, no later than June 30, 2019, and in consultation with*
28 *accredited specialists in the prevention and treatment of eating*
29 *disorders, adopt an occupational safety and health standard for*
30 *models, with an operative date of July 1, 2020, to be fully complied*
31 *with by December 31, 2020. The standard shall apply to services*
32 *provided in California by models under this chapter and Chapter*
33 *4 (commencing with Section 1700). The Occupational Safety and*
34 *Health Standards Board may update these standards from time to*
35 *time as it deems necessary.*

36 *(b) The standard shall address issues including, but not limited*
37 *to, all of the following:*

38 *(1) Protection of the model's rights to health care privacy under*
39 *the Health Insurance Portability and Accountability Act of 1996*
40 *(Public Law 104-191) and all other provisions of law.*

1 (2) *Workplace safety, especially for minors, including protection*
2 *from sexual exploitation and sexual predators.*

3 (3) *Prevention and treatment of eating disorders.*

4 SECTION 1. ~~Section 51.6 of the Civil Code is amended to~~
5 ~~read:~~

6 ~~51.6.—(a) This section shall be known, and may be cited, as the~~
7 ~~Gender Tax Repeal Act of 1995.~~

8 ~~(b) (1) No business establishment of any kind whatsoever may~~
9 ~~discriminate, with respect to the price charged for services of~~
10 ~~similar or like kind, against a person because of the person's~~
11 ~~gender.~~

12 ~~(2) (A) No business establishment of any kind whatsoever may~~
13 ~~discriminate, with respect to the price charged for goods of a~~
14 ~~substantially similar or like kind, because of the gender of the~~
15 ~~targeted user of the good. A good is targeted to a user of a particular~~
16 ~~gender if the good is designed or intended to be used by, or appeal~~
17 ~~to, a consumer of the good based on his or her gender as evidenced~~
18 ~~by either of the following:~~

19 ~~(i) The content of any marketing materials, advertising materials,~~
20 ~~or packaging would suggest to a reasonable person that the product~~
21 ~~is targeted to a specific gender.~~

22 ~~(ii) The business establishment placed the product in a location~~
23 ~~that was labeled for a specific gender.~~

24 ~~(B) For the purposes of this paragraph, goods are of a~~
25 ~~substantially similar or like kind if the goods meet all of the~~
26 ~~following conditions:~~

27 ~~(i) Share the same brand, kind, and quality.~~

28 ~~(ii) Share the same functional components.~~

29 ~~(iii) Share substantially the same materials or ingredients.~~

30 ~~(e) (1) Nothing in paragraph (1) of subdivision (b) prohibits~~
31 ~~price differences based specifically upon the amount of time,~~
32 ~~difficulty, or cost of providing the services.~~

33 ~~(2) Nothing in paragraph (2) of subdivision (b) prohibits:~~

34 ~~(A) Price differences based on gender-neutral factors, including,~~
35 ~~but not limited to, labor, materials, tariffs, or inventory~~
36 ~~management.~~

37 ~~(B) A retail establishment from passing through a price to the~~
38 ~~consumer that is set by a manufacturer, distributor, wholesaler, or~~
39 ~~other entity that the retailer cannot control.~~

1 ~~(d) Except as provided in subdivision (f), the remedies for a~~
2 ~~violation of this section are the remedies provided in subdivision~~
3 ~~(a) or (e) of Section 52. However, an action under this section is~~
4 ~~independent of any other remedy or procedure that may be~~
5 ~~available to an aggrieved party.~~

6 ~~(e) This act does not alter or affect the provisions of the Health~~
7 ~~and Safety Code, the Insurance Code, or other laws that govern~~
8 ~~health care service plan or insurer underwriting or rating practices.~~

9 ~~(f) (1) The following business establishments shall clearly and~~
10 ~~conspicuously disclose to the customer in writing the pricing for~~
11 ~~each standard service provided:~~

12 ~~(A) Tailors or businesses providing aftermarket clothing~~
13 ~~alterations.~~

14 ~~(B) Barbers or hair salons.~~

15 ~~(C) Dry cleaners and laundries providing services to individuals.~~

16 ~~(2) The price list shall be posted in an area conspicuous to~~
17 ~~customers. Posted price lists shall be in no less than 14-point~~
18 ~~boldface type and clearly and completely display pricing for every~~
19 ~~standard service offered by the business under paragraph (1).~~

20 ~~(3) The business establishment shall provide the customer with~~
21 ~~a complete written price list upon request.~~

22 ~~(4) The business establishment shall display in a conspicuous~~
23 ~~place at least one clearly visible sign, printed in no less than~~
24 ~~24-point boldface type, which reads: "CALIFORNIA LAW~~
25 ~~PROHIBITS ANY BUSINESS ESTABLISHMENT FROM~~
26 ~~DISCRIMINATING, WITH RESPECT TO THE PRICE~~
27 ~~CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND,~~
28 ~~AGAINST A PERSON BECAUSE OF THE PERSON'S~~
29 ~~GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON~~
30 ~~REQUEST."~~

31 ~~(5) A business establishment that fails to correct a violation of~~
32 ~~this subdivision within 30 days of receiving written notice of the~~
33 ~~violation is liable for a civil penalty of one thousand dollars~~
34 ~~(\$1,000).~~

35 ~~(6) For the purposes of this subdivision, "standard service"~~
36 ~~means the 15 most frequently requested services provided by the~~
37 ~~business.~~

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