

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1084 (Low) – As Amended April 28, 2021

Policy Committee:	Business and Professions	Vote:	11 - 4
	Judiciary		7 - 3

Urgency: No      State Mandated Local Program: No      Reimbursable: No

**SUMMARY:**

This bill requires a retail department store with 500 or more employees that sells childcare items, children's clothing or toys to maintain a gender-neutral section or area. Specifically, this bill:

- 1) Requires a retail department store with 500 or more employees that offers childcare items, children's clothing, or toys for sale to maintain a gender-neutral section or area, to be labeled at the discretion of the retailer, in which a reasonable selection of the items, articles and toys for children it sells shall be displayed, regardless of whether they have been traditionally marketed for either girls or for boys.
- 2) Provides, beginning on January 1, 2024, a retail department store that fails to comply with this requirement is liable for a civil penalty not to exceed \$250 for a first violation or \$500 for a subsequent violation, and which may be assessed and recovered in a civil action by the Attorney General (AG) or a district attorney (DA) or city attorney, in any court of competent jurisdiction.
- 3) Requires, if the AG, AD or city attorney prevails, the court to order the AG, DA or city attorney reasonable attorney's fees and costs.

**FISCAL EFFECT:**

- 1) Estimated costs, likely greater than \$150,000 (GF) annually, to the Department of Justice (DOJ) for the AG to bring enforcement actions.
- 2) Cost pressures (GF/Trial Court Trust Fund) in the mid-hundreds of thousands of dollars annually to the courts in additional workload. This bill authorizes the DOJ, a district attorney, or a city attorney to file injunctive relief. The estimated workload cost of one hour of court time is \$956. If 20 cases are filed statewide resulting 20 hours of court time for each case, costs would be approximately \$382,400. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for courts to perform existing duties. This is particularly true, given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing GF revenue for trial courts to continue addressing the backlog of cases in order to provide timely access.

**COMMENTS:**

- 1) **Purpose.** According to the author, the practice of retail department stores segregating childcare items, children's clothing and toys in such a manner that implies they are appropriate for only one gender is confusing to consumers seeking gender neutral items, and harmful to gender nonconforming youth.

In order for consumers to more easily locate goods traditionally marketed for both girls and boys and to reduce gender stereotypes that certain products are only appropriate for either girls or boys, this bill requires certain large retail department stores to provide gender neutral areas or sections within the stores to display such products for sale.

- 2) **Background.** The state's Unruh Civil Rights Act prohibits business establishments from discriminating against any person based on a number of protected characteristics, including but not limited to, a person's sex or gender. However, the Unruh Act does not prohibit a department store from offering or displaying children's goods in sections of the store in a way that indicates they are intended for just one gender. Nor does it explicitly prohibit charging different prices for products that are substantially the same but marketed towards customers of different genders.

Under current law, children of all genders are free to purchase children's toys, care products and clothing offered for sale in a retail store, regardless of the area or section of the store in which those items are displayed. More broadly, children and parents may enter a department store (or not) and buy any products on display there (or not), regardless of gender or gender identity.

- 3) **No Private Right of Action.** Unlike the Unruh Act and the Consumer Legal Remedies Act, this bill does not authorize a private right of action by a person who would be harmed by a retailer who failed to comply with the bill. Rather, under this bill, only the AG may bring an action for injunctive relief. The bill authorizes, but does not require, the court to impose a civil penalty not to exceed \$250 for a first violation, and a civil penalty not to exceed \$500 for each subsequent violation.
- 4) **Related Legislation.** AB 1287 (Bauer-Kahan), of this legislative session, prohibit the charging of different prices for any two goods that are substantially similar, if those goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended. AB 1287 is pending in this committee.

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