

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1287 (Bauer-Kahan)
Version: May 23, 2022
Hearing Date: June 8, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Price discrimination: gender

DIGEST

This bill prohibits businesses within California from charging different prices for any two consumer products that are substantially similar, as defined, if the price differential is based on the gender of the individuals for whom the goods are marketed or intended.

EXECUTIVE SUMMARY

Since 1960, the Unruh Civil Rights Act has prohibited all California business establishments of any kind whatsoever from discriminating between their customers based on gender, among other protected categories. Despite this prohibition, reports and studies in the years since have frequently detected ongoing patterns of gender-based pricing discrimination. This “gender tax” or “pink tax” as it is sometimes known, has been estimated to cost each woman over \$1,000 per year. Combined with the wage gap, this tax works systematically against women’s financial success. The Legislature has responded with efforts to expand and strengthen the Unruh Act’s ban on gender discrimination. In 1995, for example, California enacted the Gender Tax Repeal Act to address reports that businesses were charging women more than men for *services* like dry-cleaning a shirt or getting a haircut, even when the cost of providing the service was the same regardless of the customer’s gender. Now, in response to evidence indicating that women pay, on average, seven percent more for products marketed to women than men pay for nearly identical products marketed to men, this bill seeks to expand on legal prohibitions against gender-based pricing discrimination for *goods* as well.

The bill is author-sponsored. Support comes from consumer, civil, and women’s rights advocates. There is no opposition on file. The bill passed off of the Assembly Floor by a vote of 59-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Entitles all Californians to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, thus prohibiting discrimination on any arbitrary basis, including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (The Unruh Civil Rights Act, Civ. Code § 51.)
- 2) Prohibits business establishments from charging different prices for services of similar or like kind based on the consumer's gender. (Gender Tax Repeal Act, Civ. Code § 51.6(b).)
- 3) Allows price differences based specifically upon the amount of time, difficulty, or cost of providing the services. (Civ. Code § 51.6(c).)
- 4) Provides that, aside from a specified civil penalty for price list and signage violations, the remedies for a violation of the Gender Tax Repeal Act are the remedies that are generally available for an Unruh Civil Rights Act violation. (Civ. Code § 51.6(d).)
- 5) Provides that any person who denies, aids or incites a denial, or makes any discrimination or distinction contrary to the Unruh Civil Rights Act or to the Gender Tax Repeal Act, is liable for each and every offense for the actual damages and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage, but in no case less than \$4,000, and any attorney's fees that may be determined by the court. (Civ. Code § 52(a).)

This bill:

- 1) Prohibits any person, firm, partnership, company, corporation, or business from charging a different price for any two personal, family, or household 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.
- 2) Provides, for purposes of (1), above, that goods are "substantially similar" if they exhibit all of the following characteristics:
 - a) no substantial differences in the materials used in production;
 - b) the intended use is similar;
 - c) the functional design and features are similar; and
 - d) they are the same brand.

- 3) Specifies that difference in coloring among any of the goods shall not be construed as a substantial difference.
- 4) Specifies that nothing in this bill would prohibit differences in the price of goods based on any of the following:
 - a) the amount of time it took to manufacture those goods;
 - b) the difficulty in manufacturing those goods;
 - c) the cost incurred in manufacturing those goods;
 - d) the labor used in manufacturing those goods;
 - e) the materials used in manufacturing those goods; or
 - f) any other gender-neutral reason for charging a different price for the goods.
- 5) Authorizes the Attorney General to seek an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain a violation of (1), above.
- 6) Authorizes a court to enjoin any violation of (1), above, without requiring proof that any person has been injured or damaged by the violation, and further authorizes the court to impose a civil penalty, not to exceed \$10,000, for each instance of charging a different price for two goods that are substantially similar, in a single location.
- 7) Specifies that the bill does not operated to limit liability under the Unruh Civil Rights Act.

COMMENTS

1. What is gender-based pricing discrimination or the “pink tax?”

Many legitimate factors influence price: materials, labor, research and development costs, marketing, distribution, and, of course, the classic economic laws of supply and demand. When a business charges different prices based on the customer’s gender alone, however, those price disparities constitute discrimination. This form of discrimination is often referred to as a “gender tax” because, although it is not actually a surcharge imposed and collected by the government, gender-based pricing discrimination acts like a tax by imposing extra costs on consumers. Unlike an ordinary tax, however, revenue from gender-based pricing discrimination does not accrue to the community chest, but instead expands the profit margins of private companies. Since gender-based price discrimination disproportionately impacts women and because a common example of this phenomenon involves turning a product pink and then charging more for it on that basis alone, gender-based price discrimination is also often known as “the pink tax.”¹

¹ The phrase “pink tax” is also sometimes employed in reference to actual, government-imposed taxes on products that women need or purchase far more often than cisgender men. Charging sales tax on tampons is a quintessential example of this form of “pink tax.” Though both forms of the pink tax have discriminatory effects on the lives of

2. Evidence of the existence of the pink tax

Evidence from many sources – government, academic, and media – suggests that the pink tax is no trifle. Studies have shown that, year after year, a typical California woman pays about \$2,381 more for the same goods and services than her male counterpart.² If that estimate is accurate, then the average California woman pays pink tax of approximately \$188,000 over the course of her lifetime³ and, in aggregate, the pink tax penalizes women across California to the tune of roughly \$47 billion each year.⁴ Combined with other forms of financial discrimination – such as the pay gap – the pink tax helps to form a set of insidious and systematic barriers against equal economic opportunity for women, barriers that are even higher for women of color.

When California enacted the Gender Tax Repeal Act in 1995 (AB 1100 (Speier, Ch. 866, Stats. 1995)), proponents relied in part on data gathered in conjunction with a 1994 interim hearing on gender discrimination in the pricing of products and services conducted by the Assembly Consumer Protection, Governmental Efficiency & Economic Development Committee. That hearing documented that “adult women effectively pay a gender tax which costs each woman approximately \$1,351 annually, or about \$15 billion for all women in California.” (Sen. Judiciary Com., analysis of AB 1100 (1995-1996 Reg. Session), Aug. 22, 1995, p. 5.) Several other studies, books, and reports further documented gender-based discrimination in pricing. A survey of businesses in five major California cities by the Assembly Office of Research (AOR) in 1994, *Survey of Haircuts & Laundry Services in California*,” found that “women in California pay on the average \$5 more for a haircut and \$1.71 more to have a shirt laundered. The AOR survey also found that 64 percent of those establishments surveyed in five major California cities charged more to launder a woman’s white cotton shirt than a man’s.” (*Ibid.*)

In the time since the California State Assembly first documented the widespread existence of a gender tax on goods and services in California in 1994, a number of studies by government agencies, academics, and members of the media have confirmed the ongoing prevalence of the problem.

In 2011, researchers at the University of Central Florida (UCF) undertook a large scale survey of gender-based price disparities in the markets for personal care products and services. With regard to the consumer goods side of the equation, the researchers recorded prices for 538 products across four major U.S. retailers, including 199

women, the bill before this Committee focuses on the gender-based pricing discrimination by businesses, rather than gender-based tax discrimination by governments.

² Sen. Judiciary Com., analysis of AB 1100 (1995-1996 Reg. Session), Aug. 22, 1995, p. 5. The figure cited in the analysis refers to evidence presented at a 1994 interim hearing on gender discrimination in the pricing of products and services conducted by the Assembly Consumer Protection, Governmental Efficiency & Economic Development Committee. That figure was \$1,351 annually in 1994, or \$2,381 adjusted for inflation.

³ Based on the current female life expectancy in the United States: 79 years.

⁴ Based on July 2019 U.S. Census population in California of 39,512,223, of which slightly over half were female.

deodorants, 89 shave gel/creams, 204 razors, and 46 body sprays. They concluded that “although the differences are not uniform across types of services or products, women do tend to pay more than men for items such as deodorant, haircuts, and dry-cleaning.” The UCF team made clear that it could not positively conclude that their results established “absolute price discrimination” on the basis of gender. However, they wrote, “it stands that women do in fact spend more than men for certain comparable goods and services in the personal care industry, and this has important implications for women’s daily lives.”⁵

In 2014, the Canadian Broadcasting Corporation (CBC) aired a segment on its Marketplace program featuring a “Battle of the Sexes” that compared prices for numerous equivalent men’s and women’s consumer goods at three major retailers, including Walmart and Target. In nearly every instance, the men’s products were found to be cheaper. Even when the prices initially appeared to be the same, the CBC report frequently found that, upon closer inspection, the men’s version of the product was larger.⁶

In 2015, the New York City Department of Consumer Affairs published findings from its examination of the frequency of gender-based pricing discrimination. Entitled “*From Cradle to Cane: The Cost of Being a Female Consumer*,” the resulting report looked at nearly 800 products with clear male and female versions from more than 90 brands sold at two dozen New York City retailers, both online and in stores. It concluded that 42 percent of the time, women’s products cost more than similar products for men and on average cost 7 percent more. Specifically:

- 7 percent more for toys and accessories;
- 4 percent more for children’s clothing;
- 8 percent more for adult clothing;
- 13 percent more for personal care products; and
- 8 percent more for senior/home health care products.

In all but five of the 25 product categories analyzed, products for female consumers were priced higher than those for male consumers.

Some of the highest price differences were for products that are arguably necessities. Women’s shampoo and hair conditioner cost an average of 48 percent more. Supports and braces cost 15 percent more, personal urinals cost 21 percent more, and canes cost 12 percent more. Often times the price differences were egregious. A red scooter labeled

⁵ Duesterhaus, M., Grauerholz, L., Weichsel, R. et al. *Gend. Issues* (2011) 28: 175. <https://doi.org/10.1007/s12147-011-9106-3> (as of May 25, 2022).

⁶ *Marketplace: Battle of the Sexes* (Nov. 21, 2014) Canadian Broadcasting Corporation <https://www.youtube.com/watch?v=vKvHB5RLf3Q> (as of May 25, 2022).

for boys was \$25, while an identical pink scooter labeled for girls was double that amount.⁷

Finally, in 2018 the federal Government Accountability Office (GAO) studied the issue. Out of 10 categories of personal care products that the GAO studied, it found significantly higher prices for women in five of those categories, higher prices for men's goods in just two others (shaving gel and non-disposable razors), and mixed results or no difference for the remainder.⁸ The GAO concluded that "the target gender for a product is a significant factor contributing to price differences identified." The GAO stopped short of concluding that it had uncovered clear evidence of gender-based pricing discrimination, however, writing that it "did not have sufficient information to determine the extent to which these gender-related price differences were due to gender bias as opposed to other factors, such as different advertising costs."⁹

Taken together, these studies and reports strongly suggest that, far from abating, the pink tax has persisted across the decades and remains a common phenomenon today.

3. Concerns about prior legislative efforts to address the gender tax on goods

There have been a number of legislative attempts in California to try to combat the gender tax on goods in recent years. To date, all such legislation has met with stiff opposition, either within the Legislature or at the Governor's desk. (*See* Prior Legislation, below, for details on these efforts and their fate.)

In each instance, few have quarreled with the notion that gender-based pricing discrimination is unfair. Rather, the policy difficulty has been how to draft a legal framework that narrowly targets price differentials based on gender without exposing businesses to a significant increase in litigation calling their price-setting into question. In particular, opponents have raised three primary issues. First, how can it be determined when goods are sufficiently similar that the law should expect their price to be the same? Second, how can the gender to which goods are being marketed be identified? Third, given that myriad details and factors go into determining the price of a good, is it realistic to expect to be able to parse the role that gender may have played? Lurking in the background of each of these questions is the broader, overarching fear previously mentioned: that any statute which merely prohibits gender-based pricing discrimination without addressing these issues could lead to a flood of lawsuits in which businesses find themselves forced to try to explain every detail of how they set prices. (For a detailed discussion of these policy challenges, see the Senate Judiciary

⁷ *From Cradle to Cane: The Cost of Being a Female Consumer* (Dec. 2015) New York City Department of Consumer Affairs <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf> (as of May 25, 2022).

⁸ *Gender-Related Price Differences for Goods and Services* (Aug. 2018) U.S. Government Accountability Office <https://www.gao.gov/assets/700/693841.pdf> (as of May 25, 2022).

⁹ *Ibid.*

Committee Analysis of Sen. Bill No. 320 (2019-2020 Reg. Sess.) as amended Mar. 28, 2019 at Comment 5.)

The framework proposed by the bill currently before this Committee does not deviate significantly from its predecessors in how it handles the underlying questions raised above. It provides a basic set of criteria for establishing when two products are substantially similar and leaves the remaining questions to the common sense of the fact-finder.

Instead, this bill's primary innovation is to dramatically scale back the mechanisms for enforcement and to put them exclusively into the hands of the California Attorney General. In so doing, the bill gives businesses assurance that they are highly unlikely to be the target of litigation. As a result, unlike its predecessors, this bill has enjoyed little resistance to date: there is no opposition on file and the bill received only a solitary 'no' vote on its path through the Assembly.

4. Modest remedies available through public enforcement only

In opposing prior legislative efforts to address the pink tax, business associations have argued that robust remedies could stifle product innovation or invite abuse, particularly if enforcement is entrusted to individual consumers, rather than being restricted to public agencies. On the other hand, weak enforcement or meager remedies are unlikely to deter the pink tax. After all, the pink tax generates additional revenue for businesses, so there is an incentive to continue charging it.

As it was introduced, this bill borrowed much of its enforcement regime from a New York State statute that came into effect in 2020. (26 N.Y. GBS § 391-U.) That enforcement regime involves a civil penalty of just \$250 for a first violation and \$500 for a subsequent violation. Since the enforcement regime also specifies that all identical items priced differently on the basis of gender constitute a single violation, a business could easily get off paying a mere \$250 fine for a discriminatory pricing scheme that generates far more than that in profit. Where the pink tax results in a significant windfall, such companies might be tempted to view the potential fines as little more than a cost of doing business. Bearing that in mind, it can be questioned whether such relatively minor civil penalties have any deterrent effect at all.

Recent amendments to this bill have departed somewhat from the New York State statute. Those amendments significantly increase the potential civil penalties under the bill to \$10,000 per violation. Moreover, the recent amendments specify that each instance of charging a different price for two goods that are substantially similar, in a single location, constitutes a single violation. Since the imposition of these penalties remains exclusively in the hands of the Attorney General, these increases should boost the bill's deterrent effect without causing significant concern among businesses.

5. Relationship to the Unruh Civil Rights Act

Since as far back as 1959, California has made a legislative point of protecting the civil rights of its consumers. In that year, the state passed the Unruh Civil Rights Act. The Unruh Act declares that:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code § 51(b).)

Beyond the categories explicitly referenced in the Unruh Act, the California courts have interpreted it to prohibit all forms of “arbitrary discrimination” in the provision of goods and services as well as the offering of accommodations. (*O’Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790; *Harris v. Capitol Growth Investors XIV* (1991) 52 Cal.3d 1142.) In general, “[t]he Unruh Civil Rights Act [...] is to be liberally construed with a view to effectuating the purposes for which it was enacted and to promote justice.” (*Rotary Club of Duarte v. Board of Directors* (1986), 178 Cal. App. 3d 1035, 1046, cert. den. (1987), 481 U.S. 537.)

It is hard to see how a customer could obtain full and equal advantage from a business selling goods if the pricing is discriminatory. It may very well be the case, therefore, that the Unruh Act itself has long prohibited California businesses from charging their customers a pink tax for both services and goods. The text of the statute directly mentions services and, while there does not appear to be a recorded case that is directly on point, at least two of the cases interpreting the Unruh Act suggest that goods or products are covered as well. (See, *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal. 3d 493, “there is no indication that the Legislature intended to broaden the scope of CC § 51, requiring equal accommodations in all business establishments, to include discriminations other than those made by a business establishment in the course of furnishing *goods, services or facilities* to its clients, patrons or customers”; see also, *Surrey v. TrueBeginnings, LLC* (Cal. App. 4th Dist. Nov. 18, 2008), 168 Cal. App. 4th 414, 416, “a person must tender the purchase price for a business’s *services or products* in order to have standing to sue it for alleged discriminatory practices relating thereto.” Emphasis added.)

To ensure that the courts do not misconstrue the Legislature’s enactment of this bill as implying that the Unruh Civil Rights Act does not cover gender-based pricing discrimination already, the bill includes a provision stating that it does not limit liability under the Unruh Act.

6. Closing a potential branding loophole

As it appears in print, the bill states that two products are not substantially similar if they are not the same brand. On the one hand, this provision makes sense, because different brands will compete against each other on price, so some price differentials should be expected even where the underlying product is essentially identical. On the other hand, the provision creates a simple loophole: to charge more to women for the same product it is selling to men, a business simply has to market the men's and women's products under a different brand. The author proposes to close this loophole through an amendment offered in Committee.

7. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- prevent businesses from engaging in gender-based pricing discrimination by marketing otherwise substantially similar products under different brands.

A mock-up of the amendments in context is attached to this analysis.

8. Arguments in support of the bill

According to the author:

Women are charged more and paid less. Gendered pricing or the "Pink Tax" is systemic devaluation of women's economic wellbeing. These higher prices, especially for necessities, augments existing gender inequalities in pay and wealth. By banning the pricing of goods differently based on the gender, AB 1287 will hold companies accountable and eliminate the "Pink Tax" in California once and for all."

In support, the Legislative Women's Caucus writes:

[AB 1287 is] a top priority for the Caucus. [...] Compounded by the gender pay gap, arbitrary price differences are unjust and harmful. Women should be able to exercise their buying power without the fear of gender-based discrimination. [...] Unequal prices for women translate to impacts on their own financial well-being as well as that of their families.

The California Teachers Association writes:

Higher prices for products marketed to women also reinforce gender difference and gender inequity; it incentivizes heavily

gendered marketing from early ages. These messages reinforce gender-based stereotypes that are harmful for all children and engrain bias early on. Across our county, about 77 percent of public-school teachers today are female. AB 1287 eliminates one more barrier to gender equality.

SUPPORT

American Association of University Women, California Chapter
American Civil Liberties Union of California
California Commission on the Status of Women and Girls
California Legislative Women's Caucus
California Teachers Association
California Women's Law Center
Consumer Federation of California
Democratic Party of Contra Costa County
Equal Rights Advocates
Fund Her
National Council of Jewish Women, California
Santa Barbara Women's Political Committee
Women's Foundation California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 873 (Jackson, 2020) SB 873 was substantially similar to SB 320. SB 873 was held in the Senate Judiciary Committee due to bill limitations related to the COVID-19 pandemic.

SB 320 (Jackson, 2019) would have extended the Gender Tax Repeal Act's prohibition on gender-based price discrimination. The Act prohibits businesses from charging different prices based on gender. The bill would have extended that prohibition to the sale of consumer goods, as well. SB 320 failed passage in the Senate Judiciary Committee.

AB 1576 (Levine, 2017) would have prohibited 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 have limited enforcement of its terms to the Attorney General, a district attorney, or a city attorney

through prosecution of a civil action for preventive relief. AB 1576 was gutted and amended to address other matters.

SB 899 (Hueso, 2016) would have prohibited 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. SB 899 died in the Senate Appropriations Committee.

AB 1088 (Jackson, Ch. 312, Stats. 2001) required specified business establishments to disclose in writing the pricing for each standard service, to display a sign stating that it is illegal to base pricing on gender and that a complete price list is available upon request, and to provide the customer with a copy of the complete price list upon request. The bill made a business establishment failing to correct a violation of these requirements within 30 days of receiving written notice of a violation liable for a civil penalty of \$1,000.

AB 1100 (Speier, Ch. 866, Stats. 1995) specifically prohibited businesses from engaging in price discrimination based on gender with respect to services of a like or similar kind, while also clarifying that the prohibition does not apply to price differentials based upon the amount of time, difficulty, or cost of providing the service.

AB 2418 (Speier, 1994) would have prohibited gender-based pricing discrimination for both goods and services. AB 2418 was vetoed by then-Governor Pete Wilson.

SB 1288 (Calderon, Ch. 535, Stats. 1994): (1) directed the Department of Consumer Affairs (DCA) to provide notices to licensed barbers and cosmetologists to remind them that the Unruh Civil Rights Act prohibits gender-based pricing practices; (2) required DCA to prepare a summary of gender price discrimination-related complaints received by its licensing boards; (3) required DCA to make available to the public consumer information on gender-based pricing; and (4) quadrupled the minimum amount of punitive damages awardable to a plaintiff in a claim under the Unruh Civil Rights Act.

PRIOR VOTES:

Assembly Floor (Ayes 59, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 1)

Assembly Business and Professions Committee (Ayes 18, Noes 0)

Amended Mock-up for 2021-2022 AB-1287 (Bauer-Kahan (A) , Cristina Garcia (A))

Mock-up based on Version Number 96 - Amended Senate 5/23/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 51.14 is added to the Civil Code, to read:

51.14. (a) For the purposes of this section, the following terms shall have the following meanings:

(1) "Business" means any business acting within the State of California that sells goods to any individual or entity, including, but not limited to, retailers, suppliers, manufacturers, and distributors.

(2) "Goods" means any consumer products used, bought, or rendered primarily for personal, family, or household purposes.

(3) "Location" means a store or website.

(4) (A) "Substantially similar" means two goods that exhibit all of the following characteristics:

(i) No substantial differences in the materials used in production.

(ii) The intended use is similar.

(iii) The functional design and features are similar.

(iv) The brand is the ~~same~~. *same or both brands are owned by the same individual or entity.*

(B) A difference in coloring among any of the goods shall not be construed as a substantial difference for the purposes of this subdivision.

(b) No person, firm, partnership, company, corporation, or business shall charge a different price 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.

(c) This section does not prohibit price differences in goods or services based specifically upon any of the following:

(1) The amount of time it took to manufacture those goods.

(2) The difficulty in manufacturing those goods.

(3) The cost incurred in manufacturing those goods.

(4) The labor used in manufacturing those goods.

(5) The materials used in manufacturing those goods.

(6) Any other gender-neutral reason for charging a different price for those goods.

(d) (1) Notwithstanding any other law, whenever there is a violation of this section, the Attorney General may seek an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of those violations.

(2) If a court finds that the defendant has violated this section, an injunction may be issued by the court enjoining or restraining any violation, without requiring proof that any person has, in fact, been injured or damaged thereby. The court may make direct restitution, if applicable. In connection with the proposed application for an injunction, the Attorney General is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(3) Whenever the court determines that a violation of this section has occurred, the court may impose a civil penalty not to exceed ten thousand dollars (\$10,000). For the purposes of this section, each instance of charging a different price for two goods that are substantially similar, as specified in subdivision (b), in a single location, shall constitute a single violation.

(e) This section does not limit liability under the Unruh Civil Rights Act (Section 51).