

GUIDANCE ON THE USE OF GENDER IN PRICING OF GOODS AND SERVICES

*Prepared by the Office of the Attorney General
and the Human Rights Commission*



State of Vermont
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Introduction

Gender-based pricing is the practice of charging different prices for goods or services based on the consumer's gender.

Differential treatment has been documented in services such as car purchases and repairs, mortgages, haircuts, and dry cleaning. Generally, women pay more than men for these services. Additionally, many goods sold and marketed to women cost more than the equivalent goods marketed to men. Examples include: personal hygiene products (razor blades, lotions, shampoo and other hair care products) and toys (for example, a pink bicycle may cost more than an identical red one).

Gender-based pricing occurs right here in Vermont. The Vermont Office of the Attorney General and Human Rights Commission are issuing this guidance to increase consumers' awareness of gender-based pricing, as well as to explain to businesses how they can eliminate gender-based pricing in order to come into compliance with Vermont law.

Fortunately, as illustrated by Examples 12-13 below, many Vermont businesses do not discriminate based on gender. The Office of the Attorney General and Human Rights Commission hope that this guidance will result in more Vermont businesses following suit.

Why do we care about gender-based pricing?

Gender-based pricing is a form of discrimination. As with many other subtle and invidious forms of discrimination, consumers may not be aware that they are paying more for goods and services as a result of gender-based pricing. Therefore, the solution is not as simple as avoiding businesses that offer services based on gender, or purchasing products that are not marketed to a particular gender.

Gender-based pricing is against the law. Vermont, like most states, has adopted a Public Accommodations Act, 9 V.S.A. chapter 139, prohibiting a place of public accommodation from treating people unequally based on, among other

things, sex, sexual orientation, and gender identity.¹ For simplicity's sake, this guidance uses the term "gender" to describe discrimination based on sex, sexual orientation, and gender identity.

The Public Accommodations Act defines a "place of public accommodation" as "any school, restaurant, store, establishment, or other facility at which services, facilities, goods, privileges, advantages, benefits, or accommodations are offered to the general public."

Gender-based pricing violates the Public Accommodations Act. Under Vermont law, the Vermont Human Rights Commission conducts investigations of complaints relating to potential violations of the Public Accommodations Act. If a violation is found, the Commission may seek, among other relief, a \$10,000 penalty for each violation of the Act. Additionally, Vermont law authorizes private citizens who have been aggrieved by a violation of the Act to sue the offending business. A violation of the Public Accommodations Act is also a crime under Vermont law; those who violate the Act may be charged with a misdemeanor and fined not more than \$1,000.

In addition, gender-based pricing also violates the Vermont Consumer Protection Act, 9 V.S.A. chapter 63, which prohibits unfair or deceptive acts or practices in commerce. The Vermont Attorney General's opinion is that gender-based pricing is an unfair practice in commerce. Under Vermont law, the Attorney General may sue those who violate the Consumer Protection Act and seek, among other relief, a \$10,000 penalty for each violation. Additionally, Vermont law authorizes private citizens who have been aggrieved by a violation of the Consumer Protection Act to sue the offending business.

Gender-based pricing is not a minor inconvenience. According to a 2015 study produced by the New York City Department of Consumer Affairs,² women's products carried higher price tags 42% of the time and men's carried higher price tags 18% of the time when compared with similar products for the opposite gender. The 2015 study also referenced an earlier study, conducted by the State of

¹ "Gender identify" is defined by Vermont law as "an individual's actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual's gender or gender-identity, regardless of the individual's assigned sex at birth." 1 V.S.A. § 144.

² The study can be found here: <http://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf>.

California in 1994, which found that women pay approximately \$1,351 per year (or approximately \$2,191 in today's dollars) more than men as a result of gender-based pricing. Therefore, over the course of a woman's lifetime, she could pay a "gender tax" of tens of thousands of dollars more for the same products and services as men. To compound the problem, in Vermont women still make on average 84 cents for every dollar earned by a man.³

Examples of gender-based pricing

All of the products or services depicted below are available for purchase in Vermont.

Example 1: Cotton Pajamas

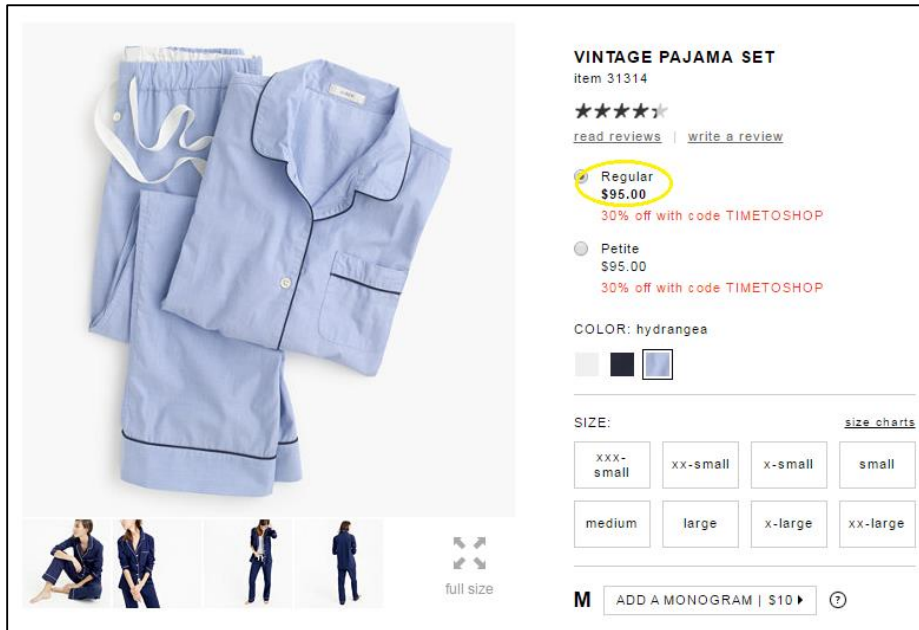
Example 1 compares the price of a set of men's cotton pajamas to that of a similar set of women's cotton pajamas, as advertised on the Internet.

Men's price: \$69.50



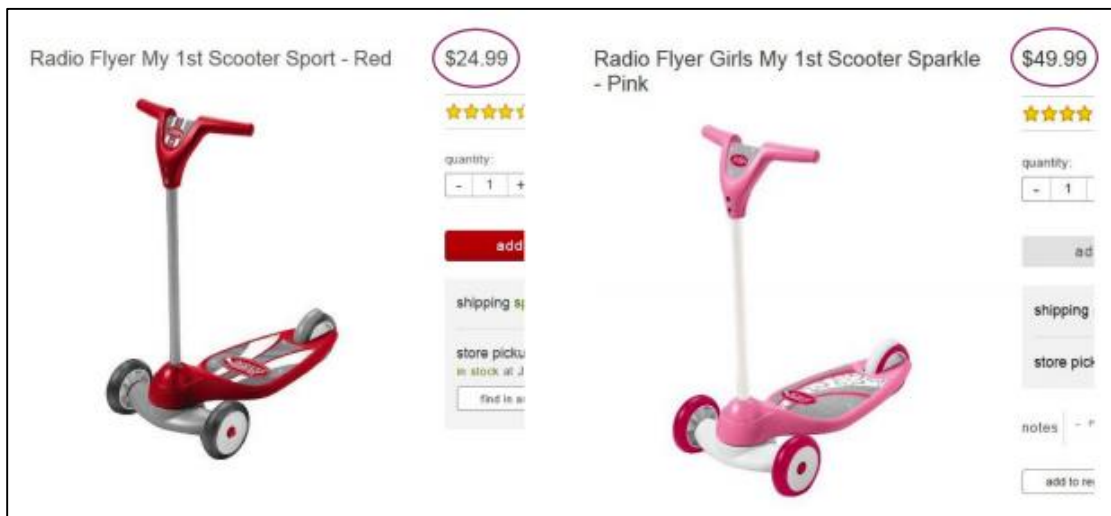
³ For more information on the gender pay gap in Vermont, visit: <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2016-vt-wage-gap.pdf>.

Women's price: \$95.00



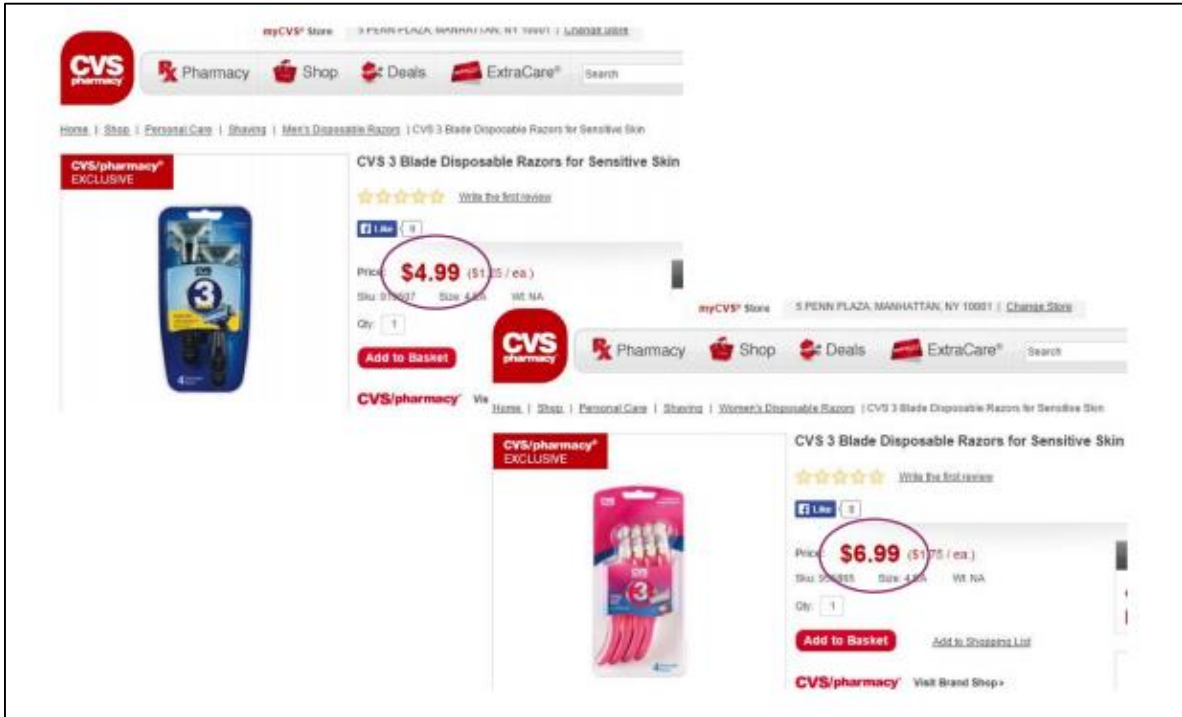
Examples 2 and 3 are actual products that were identified in the 2015 study produced by the New York City Department of Consumer Affairs.⁴

Example 2: Children's Scooters



⁴ The study can be found here: <http://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf>.

Example 3: Packs of four 3-blade razors

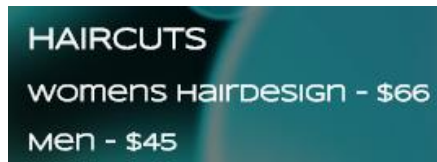


Examples 4-7 are actual screenshots from websites of Vermont hair salons.

Example 4



Example 5



Example 6

For Women Shampoo & Style - \$16 & up Shampoo & Cut - \$27 & up Shampoo, Cut & Style - \$28 & up
For Men Shampoo & Cut - \$16 & up Beard trim - \$5 & up

Example 7

Women's Haircut and Finish	Price
Shampoo, haircut and blow-dry	\$45.00
Shampoo, haircut only	\$40.00
Wet haircut and blow-dry	\$40.00
Wet down haircut only	\$35.00

Men's Haircut and Finish	Price
Shampoo haircut hot towel	\$30.00
Shampoo haircut only	\$26.00
Wet down haircut with hot towel	\$26.00
Wet haircut only	\$24.00
Buzz haircut/Military/Police	\$15.00

Example 8 depicts a window decal advertising haircut prices at a Vermont hair salon.

Example 8



Dry-cleaners do not typically advertise their prices online; however, Examples 9-11 summarize actual prices that were quoted to an investigator in the Office of the Attorney General when she called dry-cleaners around the state to inquire about the price of dry-cleaning shirts for both herself and her husband

	Women's price	Men's price	Dry-cleaner's reason for discrepancy
Example 9	\$6.25	\$2.55	Women's shirts cost more to dry-clean because "starch is used."
Example 10	\$3.00	\$2.50 (or \$2.75 if boxed)	No explanation provided.
Example 11	\$9.00	\$3.80	Women's shirts cost more to dry-clean because "they have darts."

Businesses: What can you do to eliminate gender-based pricing in order to comply with Vermont law?

Price equivalent "men's" and "women's" products and services the same. As illustrated in the examples below, many Vermont businesses price

equivalent “men’s” and “women’s” products equally. It is completely acceptable to label a product using a gender-based term, such as “women’s socks,” so long as the price of that item is not based on gender or different from the price of equivalent “men’s socks.”

Example 12

MEN'S HIKE/TREK

Hiker Boot Sock Cushion
\$23.00



WOMEN'S HIKE/TREK


Hiker Boot Sock Cushion
\$23.00




Example 13

MEN'S CLASSIC BUTTON DOWN SHIRT
HAND CRAFTED USA

Traditional style and finest quality. Our Classic Vermont Flannel Shirt delivers the endless comfort and superior quality you expect from Vermont Flannel. Two front chest pockets with button flaps. Tightly woven flannel, minimal shrinkage wash cool dry low. Double-brushed flannel for ultimate softness 100% cotton. Finest European fabric Handcut and sewn in the USA! Original and USA Patchwork plaids are extra thick and cozy!



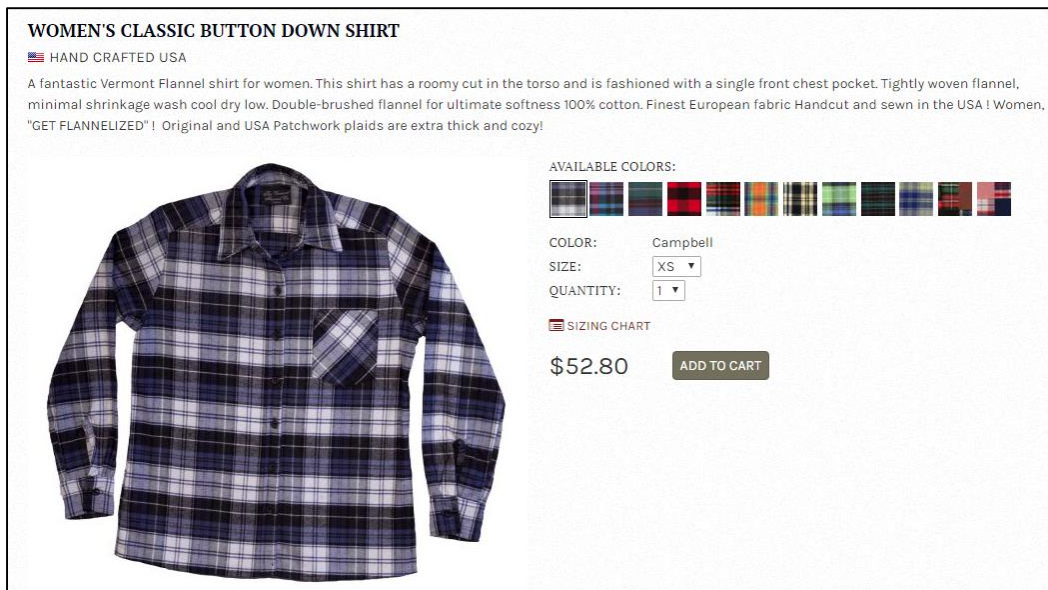
AVAILABLE COLORS:



COLOR: Campbell
SIZE: XS
QUANTITY: 1

[SIZING CHART](#)

\$52.80 [ADD TO CART](#)



To ensure that equivalent “men’s” and “women’s” services are priced the same, use gender-neutral factors to set a price. Many Vermont businesses have developed pricing models that do not discriminate against a particular gender, while still accounting for the various legitimate differences that may arise when providing a service. Listed below are examples of gender-neutral factors that these businesses consider when pricing services and describing such services:

Hair Salons:

- Experience of stylist
- Time (for example, \$30 for first 30 minutes, \$5 for every additional 5 minutes)
- Length of hair
- Complexity of cut (for example, layers versus a buzz haircut⁵)
- Coloring
- Blow dry
- Style advice

⁵ In Example 7, above, the hair salon assumed that only men receive buzz haircuts and therefore only men should be able to benefit from the lower price. Charging less for a buzz haircut is permissible so long as a hair salon does not discriminate based on gender.

Dry Cleaning:

- Starch⁶
- Darts
- Hanger or box
- Complexity of labor (for example, hand ironed versus machine pressed)
- Dry cleaned or simply laundered
- Environmentally friendly products

Whether a Vermont business decides to charge more or less for a service based on one or more gender-neutral factors is within the business' discretion. For example, it is completely acceptable for one Vermont dry-cleaner to charge more for the use of starch and a second Vermont dry-cleaner to charge all customers the same price regardless of whether starch is used.

Similarly, it is completely acceptable for a Vermont business to advertise a price range for a particular service as long as the price for a customer is not based on gender. For example, a Vermont hair salon may advertise the price of a haircut as \$30 to \$60 without any further elaboration so long as the final price of the haircut is based on gender-neutral factors. Of course, if a customer requests an explanation as to the reason or reasons for the specific price of his or her haircut, the hair salon should be prepared to explain the price based on gender-neutral factors.

When describing a particular service and its price, be careful of descriptive words that correspond with a particular gender. Different pricing for “men” and “women” will raise concerns of discrimination based on gender. Other descriptive words, however, are more subtle. For example, the word “blouse” is an inherently gender-based term and could reflect discrimination based on gender if there is no reason that the cost of a blouse or the service performed on a blouse would be different from that of a man's shirt.

⁶ Similarly, in Examples 9 and 11, the dry cleaner assumed that only women's shirts require starch or have darts. Note that in Example 9 the dry-cleaner attributed the price discrepancy to starch, whereas in Examples 10 and 11 starch did not alter the price of dry-cleaning a shirt. Charging more for starch or darts is permissible so long as a dry cleaner does not discriminate based on gender.

Consumers: What should you do if you encounter gender-based pricing?

File a complaint with the Vermont Human Rights Commission. Anyone can file a complaint with the Vermont Human Rights Commission by calling 800-416-2010 or 802-828-1625. You may also file a complaint by filling out the Public Accommodations Complaint Form (which can be found here: <http://hrc.vermont.gov/how-to-file>) and emailing it to human.rights@vermont.gov. The Human Rights Commission will share all complaints with the Attorney General's Office.

Request to pay the lower rate for services. You may always request to pay the lower gender-based rate (typically the men's rate). However, gender-based pricing is not rendered legal just because a business agrees to charge you the lower rate. In addition, ask the business to comply with Vermont law and institute gender-neutral pricing, and file a complaint with the Vermont Human Rights Commission using the procedures described above.

Compare products before you buy. Consumers may be able to avoid paying more for products if they compare the costs before they buy. In some instances, the difference between two products is merely cosmetic. In other instances, the product marketed at one gender will simply not do for the other. When comparing products, be sure to compare not just the price, but also other attributes such as a quantity; for example, two equivalent products might be priced the same, but one product may be of a greater quantity than the other.

Unfortunately, the practice of charging more for goods (as opposed to services) that are marketed to a particular gender is a pervasive practice; due to complexities in manufacturing and other factors making it difficult to prove gender discrimination, it is unlikely to disappear any time soon.

Patronize businesses that do not discriminate based on gender. As illustrated by Examples 12-13, some retailers are careful to price equivalent "men's" and "women's" products the same. You can show your support for such practices by buying their goods or services.

Consult with a lawyer. Depending on the severity of the violation, you may want to consult with a lawyer if you suspect that you have been aggrieved by

gender-based pricing. As explained above, both the Vermont Public Accommodations Act and the Vermont Consumer Protection Act expressly permit a private right of action.

The Office of the Attorney General and the Human Rights Commission hope that this guidance will eliminate gender-based pricing of services in Vermont, and serve as a crucial first step in eliminating the practice with respect to goods. If further guidance on eliminating gender-based pricing in Vermont is needed, a training could be arranged by the Human Rights Commission.

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