

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

SB 763 (Hurtado)  
Version: February 21, 2025  
Hearing Date: April 8, 2025  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Conspiracy against trade: punishment

**DIGEST**

This bill increases the existing criminal penalties, and permits the Attorney General or a district attorney to seek civil penalties of up to \$1 million, for a violation of the Cartwright Act.

**EXECUTIVE SUMMARY**

California's primary antitrust law, the Cartwright Act, prohibits businesses from restraining trade, fixing prices, and reducing competition. The Cartwright Act provides criminal and civil enforcement mechanisms, permitting the Attorney General or a district attorney to seek fines and jail time for criminal violations, and treble damages in a suit brought on behalf of the people of California or the county in which the district attorney is located.

This bill modifies the available penalties under the Cartwright Act. First, the bill increases the criminal penalties available under the Cartwright Act by increasing both the maximum fines that can be assessed and the jail time that an individual violator may serve. Second, the bill authorizes the Attorney General or a district attorney to seek civil penalties in any civil suit they bring under the Cartwright Act. Additionally, the bill allows any penalties recovered by the Attorney General to be deposited in the Attorney General antitrust account within the General Fund. These measures are intended to strengthen the Cartwright Act and ensure that the Attorney General is able to prosecute Cartwright Actions against powerful corporations that are harming Californians.

This bill is sponsored by Attorney General Rob Bonta and is supported by the American Economic Liberties Project, Economic Security California Action, and TechEquity Action. This bill is opposed by 15 business and trade organizations, including the

California Chamber of Commerce and the Civil Justice Association of California. If this Committee passes this bill, it will next be heard by the Senate Public Safety Committee.

### **PROPOSED CHANGES TO THE LAW**

Existing federal law:

- 1) Establishes the Sherman Antitrust Act of 1890 (Sherman Act). (15 U.S.C. §§ 1-7.)
- 2) Makes illegal, under the Sherman Act, every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the states or with foreign nations. (15 U.S.C. § 1.)
- 3) Authorizes a state attorney general to bring a civil action in the name of the state in any district court of the United States having jurisdiction over the defendant to secure monetary relief, as provided, for violations of the Sherman Act. (15 U.S.C. § 15c.)

Existing state law:

- 1) Establishes the Cartwright Act. (Bus. & Prof. Code, div. 7, pt. 2, ch. 2, §§ 16700 et seq.)
- 2) Defines “person” within the Cartwright Act to include corporations, firms, partnerships, and associations. (Bus. & Prof. Code, § 16702.)
- 3) Defines a “trust” under the Cartwright Act as a combination of capital, skill, or acts by two or more persons for any of the following purposes:
  - a) To create or carry out restrictions in trade or commerce.
  - b) To limit or reduce the production, or increase the price of merchandise or of any commodity.
  - c) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or any commodity.
  - d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in the state.
  - e) To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or description, by which they do all or any combination of the following:
    - i. Bind themselves not to sell, dispose of, or transport any article or any commodity or any article of trade, use, merchandise, commerce, or consumption below a common standard figure, or fixed value.

- ii. Agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure.
    - iii. Establish or settle the price of any article, commodity, or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.
  - f) Agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price in any manner might be affected. (Bus. & Prof. Code, § 16720.)
- 4) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)
- 5) Provides that any contract or agreement in violation of the Cartwright Act is absolutely void and not enforceable. (Bus & Prof. Code, § 16722.)
- 6) Authorizes the Attorney General, or the district attorney of any county, subject to specified notice requirements, to initiate a civil action or criminal proceeding for a violation of the Cartwright Act. (Bus. & Prof. Code, § 16754.)
- 7) Authorizes any person who is injured in their business or property by reason of anything forbidden under the Cartwright Act, regardless of whether the injured person dealt directly or indirectly with the defendant, to file a civil action to recover treble damages, interest, and injunctive relief.
- a) The state and its political subdivisions and public agencies are “persons” for the purpose of 7).
  - b) The Attorney General or a district attorney may file a suit for damages on behalf of a state or county political subdivision, respectively. (Bus. & Prof. Code, § 16750.)
- 8) Authorizes the Attorney General to file a civil action in the name of the people of the State of California, as *parens patriae* on behalf of natural persons residing in the state, for a violation of the Cartwright Act, to secure monetary relief in the form of treble damages sustained by those natural persons, interest, costs, and reasonable attorney fees. (Bus. & Prof. Code, § 16760.)
- 9) Provides that a violation of the Cartwright Act is a conspiracy against trade, and that knowingly engaging or participating in such a conspiracy is a crime, punishable as follows:
- a) If the violator is a corporation, by a fine of not more than \$1 million or the amount under (c), whichever is greater.

- b) If the violator is an individual, by imprisonment pursuant to Penal Code section 1170(h) for one, two, or three years; by imprisonment for up to one year in a county jail; by a fine of not more \$250,000 or the amount under (c), whichever is greater; or by both a fine and imprisonment.
  - c) If any person derives pecuniary gain from a violation of the Cartwright Act, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than twice the amount of the gain or loss. (Bus. & Prof. Code, § 16755(a).)
- 10) Provides that all moneys received by a court in payment of any fine or civil penalty imposed pursuant to 9) shall be paid to the State Treasury, if the Attorney General initiated and prosecuted the action; or to the treasurer of the county in which the prosecution is conducted, if the district attorney initiated and prosecuted the action. In an action prosecuted jointly by the Attorney General and a district attorney, the amounts shall be paid in the proportion agreed upon by the prosecuting entities. (Bus. & Prof. Code, § 16755(c).)

This bill:

- 1) Increases the existing criminal penalties for a violation of the Cartwright Act, as follows:
  - a) If the violator is a corporation, the maximum fine is increased from a maximum of \$1 million to a maximum of \$100 million, or twice the gain or loss caused by the violation, whichever is greater.
  - b) If the violator is an individual, the maximum term of imprisonment is increased to two, three, or five years; and the maximum fine is increased from a maximum of \$250,000 to a maximum of \$1 million, or twice the gain or loss caused by the violation, whichever is greater.
- 2) Requires, in an action initiated and prosecuted by the Attorney General, all moneys received by any court in payment for a fine or civil penalty imposed pursuant to a violation of the Cartwright Act to be deposited in the Attorney General antitrust account within the General Fund of the State Treasury.
- 3) Provides that a civil penalty of not more than \$1 million shall be assessed and recovered in any civil action brought by the Attorney General or district attorney against any person, corporation, or business entity for a violation of the Cartwright Act.
- 4) Requires a court or jury, in assessing the amount of a civil penalty under 3), to consider any relevant circumstances presented by the parties to the case, including, but not limited to:
  - a) The nature and seriousness of the misconduct.
  - b) The number of violations committed by the defendant.

- c) The persistence of the defendant's misconduct.
  - d) The length of time over which the defendant's misconduct occurred.
  - e) The willfulness of the defendant's misconduct.
  - f) The defendant's assets, liabilities, and net worth.
  - g) The extent to which the defendant cooperated in the Attorney General's or district attorney's investigation and litigation.
- 5) Provides that the civil penalty described in 3) shall be recovered only in a civil action brought by the Attorney General or a district attorney, or by any of their attorneys designated by them for that purpose, against any party that violates the Cartwright Act.
- 6) Provides that a penalty collected pursuant to 3) shall accrue only to the State of California or the county treasurer of the county in which the court is situated, and all proceeds shall be deposited in the Attorney General antitrust account of the General Fund (in an action brought by the Attorney General) or to the county (in an action brought by a district attorney).
- 7) Provides that, unless otherwise expressly provided by law, the remedies or penalties provided within the Cartwright Act are cumulative to each other and to the remedies or penalties available under other state law.

### COMMENTS

#### 1. Author's comment

According to the author:

SB 763 is a crucial step toward modernizing and strengthening the penalties under California's Cartwright Act to effectively deter anti-competitive practices that harm consumers, small businesses, and our overall economy. Over the past two decades, we've witnessed an alarming concentration of market power, with monopolies and oligopolies dominating entire industries. When corporations manipulate markets, inflate prices, and eliminate competition, they drive up costs for working families already struggling to afford necessities like rent, food, and energy. These corporate giants use mergers, acquisitions, and strategic barriers to crush competition, leaving consumers with fewer choices and higher prices. Despite this growing threat, California's penalties for anti-competitive behavior remain woefully outdated – corporate fines that once seemed substantial are now little more than the cost of doing business. SB 763 addresses this imbalance by increasing the maximum penalty for corporate violators to \$100 million and for individuals to \$1 million, with the possibility of up to 5 years in prison. This ensures that our penalties align with the federal Sherman Act and, more importantly, serve as real deterrents rather than minor

inconveniences. By strengthening these enforcement tools, we send a clear message: California will not allow powerful corporations to rig the system at the expense of working people.

## 2. An extremely brief history of antitrust law and the renewed interest in antitrust enforcement

American antitrust laws were enacted in the Gilded Age as a response to the industrial monopolies that arose during the Industrial Revolution.<sup>1</sup> The Sherman Act was enacted “to protect consumers “from practices that deprive them of the benefits of competition and transfer their wealth to firms with market power.”<sup>2</sup> California passed its own antitrust law, the Cartwright Act, in 1907.<sup>3</sup> The Sherman Act is complimentary to, and does not preempt, state antitrust laws such as the Cartwright Act.<sup>4</sup>

Antitrust litigation was common in the first half of the 20th century, but some argue that the courts improperly limited the scope of antitrust laws by focusing solely on restraints of trade that caused direct economic harm to consumers and incorrectly excluding other forms of commercial behavior that harm consumers.<sup>5</sup> For example, many agreed with Justice Louis Brandeis that “bigness” was a problem on its own because it allowed corporations to accrue too much power:

Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy. Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. The fact that they are not vicious men but respectable and social minded is irrelevant. That is the philosophy and the command of the Sherman Act. It is founded on a theory of hostility to the concentration in private hands of power so great that only a government of the people should have it.<sup>6</sup>

In the second half of the 20th century, antitrust litigation was relatively uncommon, particularly by the United States Department of Justice.<sup>7</sup> Some credit this to the courts’ narrow interpretation of the conduct prohibited by antitrust laws.<sup>8</sup>

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<sup>1</sup> Simpson, *Ebbs and Flows in Antitrust Enforcement, and the Resurgence of Public Favor* (2022) 28 J.L. Bus. & Eth 109, 117-118.

<sup>2</sup> *Id.* at p. 121.

<sup>3</sup> Stats. 1907, Ch. 530, §§ 1-12, pp. 984-987.

<sup>4</sup> See *Parker v. Brown* (1943) 317 U.S. 341, 351.

<sup>5</sup> Leydecker, *A Different Curse: Improving the Antitrust Debate About “Bigness”* (2022) 18 N.Y.U. LJ. & Bus. 845, 860-861.

<sup>6</sup> *U.S. v. Columbia Steel Co.* (1948) 334 U.S. 494, 536 (dis. opn. of Douglas, J.).

<sup>7</sup> Simpson, *supra*, 28 J.L. Bus. & Eth. at pp. 124-125.

<sup>8</sup> *Id.* at pp. 123-124.

We are now in what many are calling a “New Gilded Age.”<sup>9</sup> Income inequality has reached, if not surpassed, Gilded Age levels. In the Gilded Age, the wealthiest 9 percent of families owned 71 percent of personal wealth in the United States.<sup>10</sup> According to the Board of Governors of the Federal Reserve, as of 2024, the top 10 percent of families held 67.2 percent of wealth in the United States,<sup>11</sup> with the top 0.1 percent worth over five times more than the entire bottom 50 percent (\$22.14 trillion vs. \$4.01 trillion).<sup>12</sup> Additionally, a small number of companies have amassed a remarkable amount of wealth, power, and control over Americans’ personal data and lives, which have enabled them to engage in anticompetitive behavior.<sup>13</sup>

In response, federal and state prosecutors have ramped up antitrust litigation. The defendants in many of these recent and pending antitrust suits are tech companies, including big players such as Google,<sup>14</sup> Amazon,<sup>15</sup> and Meta,<sup>16</sup> and more niche companies such as RealPage<sup>17</sup> and Agri Stats.<sup>18</sup> During the Biden Administration, Lina Khan, then-Chair of the Federal Trade Commission (FTC), was open about her concerns that Big Tech’s bigness and dominance were hurting, not helping, the country, and her belief that limiting antitrust analysis to consumer prices alone fails to capture the damage caused by other forms of anticompetitive behavior.<sup>19</sup>

The lawsuits listed above were all filed under the Biden Administration, and it is unclear whether the Trump Administration will take the same approach. President Trump fired Khan and – potentially illegally – two Democratic FTC commissioners,<sup>20</sup>

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<sup>9</sup> E.g., Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (2018); Krugman, *Why We’re in a New Gilded Age* (May 8, 2014) N.Y. Rev., available at <https://perma.cc/MVQ5-NS5S>. All links in this analysis are current as of April 4, 2025.

<sup>10</sup> Simpson, *supra*, 28 J.L. Bus. & Eth. at p. 117.

<sup>11</sup> Board of Governors of the Federal Reserve System, DFA: Distributional Financial Accounts, Distribution of Household Wealth in the U.S. Since 1989, Wealth by wealth percentile group (shares), <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/table/#quarter:141;series:Net%20worth;demographic:networth;population:all;units:shares>.

<sup>12</sup> Board of Governors of the Federal Reserve System, DFA: Distributional Financial Accounts, Distribution of Household Wealth in the U.S. Since 1989, Wealth by wealth percentile group (levels), <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/table/#quarter:141;series:Net%20worth;demographic:networth;population:all;units:levels>.

<sup>13</sup> E.g., Simpson, *supra*, 28 J.L. Bus. & Eth. at pp. 126-129; Khan, *Amazon’s Antitrust Paradox* (2017) 126 Y.L.J. 710, *passim*.

<sup>14</sup> E.g., *U.S. v. Google LLC* (D.D.C.) Case No. 1:20-cv-03010; *U.S. v. Google LLC* (E.D. Va.) Case No. 1:23-cv-00108-LMB-JFA; *State of Texas, et al. v. Google LLC* (E.D. Tex.) Case No. 4:20-CV-957-SDJ.

<sup>15</sup> *FTC v. Amazon.com, Inc.* (W.D. Wash.) Case No. 2:23-cv-01495-JHC.

<sup>16</sup> *FTC v. Meta Platforms, Inc.* (D.D.C.) Case No. 1:20-cv-03590-JEB.

<sup>17</sup> *U.S., et al. v. RealPageInc., et al.* (M.D.N.C.) 1:24-cv-00710-LCB-JLW.

<sup>18</sup> *U.S. v. Agri Stats, Inc.* (D. Minn.) Case No. 0:23-cv-030009.

<sup>19</sup> E.g., FTC, Remarks of Chair Lina M. Khan at the FTC Tech Summit (Jan. 25, 2024), available at <https://www.ftc.gov/news-events/news/speeches/remarks-chair-lina-m-khan-ftc-tech-summit>.

<sup>20</sup> Weissert & Rugaber, *Trump fires 2 Democrats on Federal Trade Commission, seeking more control over regulators* (Mar. 18, 2025) AP, <https://apnews.com/article/trump-ftc-firings-bedoya-slaughter-488bfe5419e48d5acbd95d3f9401404b>.

but his replacement FTC Chair, Andrew Ferguson, has said that Big Tech remains one of the FTC's priorities.<sup>21</sup> And while many Big Tech CEOs made a show of cozying up to President Trump,<sup>22</sup> apparently in hopes of getting on his good side and avoiding antitrust enforcement actions, it is too soon to say how much their kowtowing will get them.<sup>23</sup>

In the event that the federal government eases up on antitrust enforcement, states will still be able to enforce their own antitrust laws. California is a party to many of the pending suits noted above, and has also initiated many antitrust actions on behalf of Californians under the Cartwright Act.<sup>24</sup>

### 3. The Cartwright Act and its remedies

The State's primary antitrust law, the Cartwright Act,<sup>25</sup> provides that "agreements fixing or tampering with prices are illegal per se."<sup>26</sup> These prohibitions "rest on the premise that unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions."<sup>27</sup> The Cartwright Act's prohibitions on anticompetitive behavior are "broader and deeper in range" than the federal Sherman Act's protections.<sup>28</sup>

The Cartwright Act provides several civil and criminal avenues for remedying, or penalizing violations of, the Act. Persons, including state and local subdivisions, may

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<sup>21</sup> CNBC Exclusive: Transcript" FTC Chair Andrew Ferguson Speaks with "Squawk Box" Today (Mar. 13, 2025), CNBC, <https://www.cnbc.com/2025/03/13/cnbc-exclusive-transcript-ftc-chair-andrew-ferguson-speaks-with-cnbc-squawk-box-today.html>.

<sup>22</sup> E.g., Trump inauguration: Zuckerberg, Bezos and Musk seated in front of cabinet picks (Jan. 20, 2025) The Guardian, <https://www.theguardian.com/us-news/2025/jan/20/trump-inauguration-tech-executives>.

<sup>23</sup> On the one hand, the FTC is moving forward with an antitrust probe of Microsoft commenced during the Biden Administration (Reuters, *Trump's FTC advances broad antitrust probe of Microsoft*, Bloomberg News reports (Mar. 12, 2025), <https://www.reuters.com/technology/trumps-ftc-moves-ahead-with-broad-antitrust-probe-microsoft-bloomberg-news-2025-03-12/>), and the Department of Justice is still asking a federal judge to break up Google (Wong, *Trump's Justice Department still wants to break up Google* (Mar. 7, 2025) LA Times, available at <https://www.latimes.com/business/story/2025-03-07/trumps-doj-still-proposes-breaking-up-google>). On the other hand, the Department of Justice in the same case has dropped its Biden-era demand that Google sell its AI investments (Godoy, *US drops bid to make Google sell AI investments in antitrust case* (Mar. 7, 2025) Reuters, <https://www.reuters.com/technology/us-drops-bid-make-google-sell-ai-investments-antitrust-case-2025-03-07/>), and President Trump has expressed hostility toward the EU's attempts to regulate anticompetitive behavior by American tech companies (Parry, *EU throws down gauntlet to Trump with Apple, Google rulings* (Mar. 20, 2025) Politico, <https://www.politico.eu/article/eu-donald-trump-google-apple-rulings-dma-tech/>).

<sup>24</sup> See Office of the Attorney General, Antitrust Highlights, <https://oag.ca.gov/antitrust/highlights>.

<sup>25</sup> Bus. & Prof. Code, pt. 2, ch. 2, §§ 16700 et seq.

<sup>26</sup> *Oakland-Alameda County Builders' Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 363.

<sup>27</sup> *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 935 (internal quotation marks omitted).

<sup>28</sup> *In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 160 (internal quotation marks omitted); see 15 U.S.C. §§ 1-7.



seek treble damages from a Cartwright Act violator in a civil action.<sup>29</sup> The Attorney General may also file a civil action in the name of the People of California, as *parens patriae* on behalf of natural persons residing in the state, to secure damages for injuries caused by Cartwright Act violations; a district attorney may file such a *parens patriae* suit on behalf of the natural persons residing in the district attorney's county.<sup>30</sup> A prevailing plaintiff in a civil action for a Cartwright Act violation is also entitled to interest, costs, and reasonable attorney fees.<sup>31</sup>

On the criminal side, the Attorney General or a district attorney may file a criminal suit against any person who engages in, or takes part in, a conspiracy against trade, or any other person who knowingly aids in or carries out any portion of, such a conspiracy.<sup>32</sup> A person found guilty can be punished as follows:

- If the violator is a corporation, by a fine of not more than \$1 million, or the amount of double the violator's pecuniary gain or the loss caused by the violation, whichever is greater.
- If the violator is an individual, by imprisonment of one, two, or three years; by imprisonment for not more than one year in a county jail; by a fine of up to \$250,000, or the amount of double the violator's pecuniary gain or the loss caused by the violation, whichever is greater; or by both a fine and imprisonment.<sup>33</sup>

The \$1 million maximum fine for a corporate violator was added in 1975 and has not been increased since.<sup>34</sup> The fine for an individual violator was raised from \$100,000 to \$250,000 in 1990.<sup>35</sup> In the same year, the alternative fine of double the violator's pecuniary gain or loss caused by the violation was added for both individual and corporate defendants.<sup>36</sup>

#### 4. This bill increases and expands the penalties available in Cartwright Act actions brought by the Attorney General or a district attorney

This bill makes several changes to the Cartwright Act's enforcement mechanisms in order to strengthen the Act.

First, this bill increases the maximum criminal penalties that can be assessed in a criminal Cartwright Act action brought by the Attorney General or a district attorney. The maximum fine for a corporate violator is increased from a maximum of \$1 million to a maximum of \$100 million; the maximum fine for an individual violator is increased from \$250,000 to \$1 million. In both cases, the violator can alternatively be assessed a

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<sup>29</sup> Bus. & Prof. Code, § 16750.

<sup>30</sup> *Id.*, § 16760.

<sup>31</sup> *Id.*, §§ 16750, 16760.

<sup>32</sup> *Id.*, § 16755.

<sup>33</sup> *Ibid.*

<sup>34</sup> See Stats. 1975, Ch. 386, § 1.

<sup>35</sup> See SB 2576 (Kopp, Ch. 486, Stats. 1990).

<sup>36</sup> *Id.*

fine in the amount of double the gains or losses caused by the violation, if that amount is greater than the maximum fine. Additionally, this bill increases the term of imprisonment to which an individual violator can be sentenced, to up to a maximum of five years. The Senate Public Safety Committee, which is set to hear this bill if it passes out of this Committee, will analyze these provisions.

Second, this bill adds to the Cartwright Act a civil penalty of up to \$1 million to be assessed in any civil Cartwright Act action brought by the Attorney General or a district attorney. The civil penalties assessable under this bill are less severe than the maximum criminal penalties under the bill, which seems consistent with the lower burden of proof necessary in a civil case. Additionally, the bill requires the judge assessing the penalty to consider a number of factors relating to the defendant's behavior, which may indicate a greater or lesser degree of culpability, and to tailor the civil penalty accordingly. This provision appears to give courts the discretion necessary to ensure that an overly large civil penalty is not assessed. Information provided by the sponsor shows that over 40 states already allow the imposition of civil penalties for antitrust violations.

Finally, this bill provides that fines and penalties recovered in a Cartwright Act action brought by the Attorney General shall be deposited in the Attorney General antitrust account within the General Fund.

#### 5. Arguments in support

According to the bill's sponsor, Attorney General Rob Bonta:

Given their vast resources, corporations and individuals currently view the existing criminal fines as a minor cost of doing business, leading to repeated antitrust violations. Without stronger financial and personal penalties, there is no meaningful disincentive for committing illegal practices like price-fixing, as the costs of violating the antitrust laws will be outweighed by the potential financial gains. The resulting antitrust abuses systemically undermine fair competition, which negatively impacts workers, business, and consumers.

Accordingly, SB 763 would upgrade criminal penalties under the Cartwright Act to better align them with those provided under the federal Sherman Antitrust Act. Under SB 763, the proposed criminal fines in CA would become equal to those imposed by the federal Sherman Antitrust Act (15 U.S.C. §§ 1, 2), which imposes fines of up to \$1 million against individuals and up to \$100 million against corporations.

In addition, the bill would add civil penalties of up to \$1 million per violation that courts can impose based on factors such as the nature, seriousness, and persistence of the misconduct. In adding civil penalties to the Cartwright Act, SB 763 would join California with 44 other states that already provide such remedies

under their state antitrust laws. Of the 44 states that already authorize civil penalties, 40 of them impose a higher civil penalty than the \$2,500 per violation that is recoverable in California, indirectly, through enforcement of the Unfair Competition Law.

As the fifth largest economy in the world, and home to some of the wealthiest corporations, California has a responsibility to fight for a fair and competitive marketplace, especially amid the unprecedented wave of corporate mergers and market consolidation that we are seeing today. For these reasons, updating the penalties in the Cartwright Act is critical to deterring anticompetitive conduct in the current market.

#### 6. Arguments in opposition

According to a coalition of the bill's opponents:

The California Supreme Court has noted that the Cartwright Act is "broader in range and deeper in reach" than the Sherman Act. As a result, the penalties under the Cartwright Act would not be consistent with federal law because they could potentially apply to conduct beyond the scope of the Sherman Act.

The California Office of the Attorney General has also acknowledged the Cartwright Act covers "broader" conduct than its federal counterpart and argued that pleading a Cartwright Act violation does not require meeting the heightened pleading standard of Federal Rule of Civil Procedure 9(b).

The broader reach of the Cartwright Act, coupled with the possible lower pleading standards, could mean companies and individuals doing business in California could face devastating penalties with this increase. Moreover, the Cartwright Act provides a broader private right of action than the Sherman Act. Unnecessary and unwarranted expansions of California's antitrust law will invite excessive and abusive litigation and ultimately harm California's consumers and its economy.

#### SUPPORT

Attorney General Rob Bonta (sponsor)  
American Economic Liberties Project  
Economic Security California Action  
TechEquity Action

#### OPPOSITION

American Property Casualty Insurance Association  
Brea Chamber of Commerce

California Business Properties Association  
California Chamber of Commerce  
California Grocers Association  
California Hospital Association  
California Retailers Association  
Civil Justice Association of California  
Council of Business and Industries  
Family Business Association of California  
Greater Conejo Valley Chamber of Commerce  
Insights Association  
Oceanside Chamber of Commerce  
Software Information Industry Association  
United Hospital Association

### **RELATED LEGISLATION**

#### **Pending legislation:**

SB 295 (Hurtado, 2025) establishes the California Preventing Algorithmic Collusion Act of 2025, which prohibits a person from using or distributing any pricing algorithm that uses, incorporates, or was trained with competitor data and requires a person using a pricing algorithm to recommend or set a price or commercial term to make certain commercial disclosures. SB 295 is pending before this Committee.

AB 325 (Aguiar-Curry, 2025) expressly prohibits, within the Cartwright Act, the use or distribution of pricing algorithms that use, incorporate, or were trained on nonpublic competitor data. AB 325 is pending before the Assembly Judiciary Committee.

#### **Prior legislation:**

SB 1154 (Hurtado, 2024) would have established the California Preventing Algorithmic Collusion Act of 2024, which would have prohibited the use of pricing algorithms to set or recommend a price or commercial term in this state that incorporates nonpublic competitor data, as defined. SB 1154 died in this Committee.

SB 697 (Hurtado, 2024) was substantially similar to this bill, except that it would have increased the maximum term of imprisonment to ten years. SB 697 died in the Assembly Appropriations Committee.

AB 2230 (Bennett, 2024) would have established the Residential Housing Unfair Practices Act of 2023, which would have amended the Cartwright Act to expressly list certain practices relating to the provision of housing. AB 2230 died in the Assembly Judiciary Committee.

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