SB 52 (Pérez)
Version: April 8, 2025
Hearing Date: April 22, 2025
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Housing rental rates and occupancy levels: algorithmic devices

DIGEST

This bill prohibits a person from offering a rental pricing algorithm with the intent that it be used by two or more persons in the same or a related market, and prohibits a person from knowingly using such an algorithm; and prohibits the use of nonpublic competitor data, as defined, in any rental pricing algorithm.

EXECUTIVE SUMMARY

A human setting prices has to (1) take in new information, (2) analyze the effect of the new information on their own prices, and (3) determine whether to raise or lower prices, and by how much. A pricing algorithm, on the other hand, often uses artificial intelligence and machine learning to weigh variables including supply and demand, a competitor's prices, and anticipated delivery time, as well as any other factors its programmers have baked into the formula, and can set new prices nearly instantaneously in response to new information. Algorithms that rely on public data alone can still give a seller a massive advantage over a consumer who does not have access to the same volume of data.

Recently, some businesses have started to offer algorithmic pricing models that expressly incorporate competitors' competitively sensitive data—for example, by factoring confidential rental rate and occupancy levels, provided by the users of the algorithm, to make pricing and occupancy recommendations to each landlord on the basis of that confidential information. The federal government and California are in a pending lawsuit against one such algorithm producer, arguing that incorporating the competitively sensitive data of multiple competitors violates the federal Sherman Antitrust Act. But because antitrust laws are drafted in broad terms, rather than prohibiting specific acts and practices, it will likely take substantial time and litigation

costs to reach a decision in the pending suit, or other suits against similar algorithm providers.

This bill is intended to supplement, not displace, the Sherman Act or its state counterpart, the Cartwright Act, by expressly prohibiting algorithmic collusion in the residential rental market, whether deliberate or inadvertent. To that end, this bill prohibits (1) the offering for sale, or use, of any single algorithm by two or more landlords in the same or related market; and (2) the offering for sale, or use, of a single algorithm that incorporates nonpublic competitor data pertaining to residential premises in the state as an input in the algorithm. The bill permits the Attorney General, or a person injured by a violation, to file a civil suit for specified relief. The author has agreed to amend the bill to clarify certain terms and what constitutes a violation, and to clarify that a person must be harmed by a violation in order to bring a cause of action.

This bill is sponsored by ACCE, TechEquity, and the Western Center on Law and Poverty, and is supported by 27 housing, labor, consumer protection, and governmental entities. This bill is opposed by the California Apartment Association, the California Association of Realtors, and RealPage, Inc.

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 the 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 purposes 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).)

This bill:

1) Provides that it is unlawful for any person to sell, license, or otherwise provide to two or more persons a rental pricing algorithm with the intent that it be used by two or more persons in the same market or a related market to set or recommend rental rates, lease terms, or occupancy levels for residential premises.

2) Provides that it is unlawful for any person to use a rental pricing algorithm to set rental rates, lease terms, or occupancy levels for residential premises if the person knew or should have known that another person in the same or related market used or will use the rental pricing algorithm to set rental rates, lease terms, or occupancy levels for a residential premises.

3) Provides that a person engaged in the business of providing a rental pricing algorithm that is used to set or recommend rental rates, lease terms, or occupancy levels for residential premises, and that is not otherwise prohibited under 1), shall not use nonpublic competitor data pertaining to residential premises in the state.

4) Provides that each month a violation exists, and each residential premises for which the person uses the rental pricing algorithm, shall constitute a separate and distinct violation.

5) Defines "nonpublic competitor data," for purposes of 1)-4), as follows:
   a) "Nonpublic competitor data" means nonpublic data, including information about actual rental rates, lease terms, occupancy rates, and similar data, regardless of whether the information is attributable to a specific competitor or anonymized, and regardless of whether the information is derived from or otherwise provided by another person that competes in the same or a related market.
   b) "Nonpublic competitor data" does not include any of the following:
      i. Information regarding actual rent amounts charged to a tenant, occupancy rates, and lease start and end dates that are obtained from the following publicly accessible sources: (1) advertisements of available rental properties, including lists published on websites maintained by a property owner or manager; or (2) rental registries maintained by a city, county, city and county, or state or federal agency.
      ii. Information obtained from the United States Census Bureau or State Census Data Center.
      iii. Aggregated information distributed, reported, or otherwise communicated in a way that is not reasonably linkable to a competitor, such as narrative industry reports, news reports, business commentaries, or generalized industry survey results, provided that such aggregated information is not derived from sources which may be considered nonpublic competitor data.
      iv. Other forums, including websites, in which information about actual rent amounts charged to a tenant, occupancy rates, or lease start and end dates is equally accessible to tenants or prospective tenants and landlords.

6) Defines the following additional terms for purposes of 1)-5):
   a) "Nonpublic data" means information that is not widely available or easily accessible to the public, including public-facing data made available under terms of service that prohibit the use of that data.
   b) "Rental pricing algorithm" means a service or product, including, but not limited to, an artificial intelligence, algorithmic program, or software tool, that uses one or more algorithms to analyze or process data regarding historical or contemporaneous rental rates, lease terms, or occupancy levels of residential premises.
      i. "Rental pricing algorithm" includes a product that incorporates a rental pricing algorithm.
      ii. "Rental pricing algorithm" does not include either (1) a report that publishes publicly available rental data in an aggregated manner but does not recommend rental rates or occupancy levels for future leases, or (2) a

product used for the purposes of establishing rent or income limits in accordance with the affordable housing program guidelines of a local, state, or federal program.

7) Provides remedies for a violation of 1)-3), as follows:
   a) The Attorney General, in the name of the people of the State of California, and the city attorney or county counsel in the jurisdiction in which the rental unit is located, in the name of the city or county, may file a civil action for a violation of 1)-3) for damages, injunctive relief, restitution, or civil penalties of up to $1,000 for violation, or any combination of those remedies. The court shall award reasonable attorney's fees and costs to the Attorney General, city attorney, or county counsel if they are the prevailing party in the action.
   b) A person may file a civil action for a violation of 1)-3) for damages, injunctive relief, or civil penalties of up to $1,000 per violation, or any combination of those remedies, and the court shall award reasonable attorney's fees to the prevailing plaintiff in the action. If a lease provision limits a tenant from recovering attorney's fees, it shall not be enforceable against a tenant's claim for attorney's fees in an action under 1)-3).

8) Provides that nothing in 1)-7) shall impair or limit the applicability of antitrust laws, and that the prohibitions described in 1)-3) apply in addition to, and not in lieu of, any prohibitions described in applicable state or federal antitrust laws.

9) Provides that a violation of 1)-3) shall constitute an unlawful restraint on competition within the meaning of the Cartwright Act and an act of unfair competition within the meaning of the UCL; and that the remedies and penalties provided in 4) and 7) are cumulative to each other and to the remedies or penalties available under all other laws.

COMMENTS

1. Author's comment

According to the author:

> California has a rental housing affordability crisis. This state is the most expensive state to rent in, requiring an average hourly wage of $47.38 to afford a 2-bedroom apartment. More than half of the state's renters are rent-burdened as they have to contribute more than 30% of their income to rent. While the rental housing affordability crisis isn't new, exacerbating this crisis is how landlords are using tech to inflate rents above what is fair.
>
> Real estate giants are harnessing algorithms to recommend rent prices based on rental data from thousands of landlords and other sources. These AI-backed

rent-setting tools turn competitors into collaborators for a potentially already unlawful information sharing collusion operation that provides landlords with an unfair and unsustainable advantage. This is tech-powered exploitation and worsening the already dire affordability crisis.

Although federal and state law clearly sets precedent for illegal antitrust and anticompetitive practices, landlords continue to rely on algorithms like RealPage provides, arguing that their practices are not covered under those laws. As such, landlords continue to share and compile competitive data through this platform in order to set inflated rental prices in a manner eerily similar to examples of antitrust violations. The White House Council of Economic Advisors recently estimated that the use of algorithmic rent-fixing software costs individual renters an average of $70 per month more than a renter whose landlord does not rely on this software, a collective cost of nearly four-billion dollars more in annual rent caused by this practice.

Due to the sketchy nature of algorithmic utilization among landlord competitors, federal, state, and local government officials have begun taking action to address what has been depicted as "an unlawful information-sharing scheme. Companies like RealPage also rely on inaccurately-trained algorithms to perform background checks, often leading to unjust housing denials and further exacerbating access to housing

As such, these practices distort the rental market beyond competitive dynamics, further exacerbating the housing crisis facing California.

SB 52 addresses the question of price-fixing in rental markets through third party algorithms by clearly defining in state law that using such methods is illegal. Further, SB 52 provides mechanisms for accountability and enforcement for using these algorithms illegally.

2. Background on price-fixing algorithms

"Pricing algorithms are intended to help firms determine optimal pricing on a near real-time basis."[1] A human setting prices has to (1) take in new information, (2) analyze the effect of the new information on their own prices, and (3) determine whether to raise or lower prices, and by how much. A pricing algorithm, on the other hand, often uses artificial intelligence and machine learning "to weigh variables such as supply and demand, competitor pricing, and delivery time," as well as any other factors its programmers have baked into the formula, and can set new prices nearly

---

[1] Bertini & Koenigsberg, *The Pitfalls of Pricing Algorithms*, Harvard Business Review (Sept.-Oct. 2021), *available at* https://hbr.org/2021/09/the-pitfalls-of-pricing-algorithms. All links in this analysis are current as of April 18, 2025.

instantaneously in response to new information.[2] Studies indicate that the use of certain pricing algorithms results in higher prices for consumers,[3] particularly when one seller is using a more sophisticated reinforced learning algorithm and its competitors are using a rule-based algorithm that incorporates that seller's price as an input.[4]

As algorithms grew more expansive in the 2010s, scholars raised concerns that algorithms—particularly reinforced learning algorithms—could "learn" to tacitly collude with competitors' algorithms, thereby keeping prices high.[5] More recently, however, some businesses have offered algorithmic pricing models that expressly incorporate competitors' nonpublic, competitively sensitive data—for example, by factoring confidential rental rate and occupancy levels, provided by the users of the algorithm, to make pricing and occupancy recommendations to each landlord on the basis of that confidential information. As explained below, there are allegations that these algorithms not only harm consumers, but also violate existing state and federal antitrust laws.

3. <u>Antitrust law and algorithms</u>

Under the federal Sherman Act,[6] "[horizontal] price-fixing agreements are unlawful per se."[7] This per se bar extends to any "combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity" in interstate or foreign commerce.[8] Likewise, under the State's own antitrust law, the Cartwright Act,[9] "agreements fixing or tampering with prices are illegal per se."[10] 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."[11] The Cartwright Act's prohibitions on anticompetitive behavior are "broader and deeper in range" than the federal Sherman Act's.[12]

Former Federal Trade Commission (FTC) Chairwoman Maureen K. Ohlhausen argues that the use of a vendor that provides algorithmic pricing services derived from confidential pricing information provided by multiple competitors is not, as an antitrust

---

[2] *Ibid.*

[3] Calvano, et al., *Artificial Intelligence, Algorithmic Pricing, and Collusion* (2020) 110 Am. Econ. Rev. 3267.

[4] Wang, et al., *Algorithms, Artificial Intelligence and Simple Rule-Based Pricing* (Jun. 29, 2022) SSRN, p. 40, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4144905.

[5] *Calvano*, *supra*, at p. 3268.

[6] 15 U.S.C. §§ 1-7.

[7] *U.S. v. Socony-Vacuum Oil Co.* (1940) 310 U.S. 150, 218.

[8] *Id.* at p. 223.

[9] Bus. & Prof. Code, pt. 2, ch. 2, §§ 16700 et seq.

[10] *Oakland-Alameda County Builders' Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 363.

[11] *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 935 (internal quotation marks omitted).

[12] *In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 160 (internal quotation marks omitted).

matter, new territory.[13] She believes such services are merely an updated version of a long-prohibited practice, known as the "hub-and-spoke conspiracy": "[j]ust as the antitrust laws do not allow competitors to exchange competitively sensitive information directly in an effort to stabilize or control industry pricing, they also prohibit using an intermediary to facilitate the exchange of confidential business information."[14] To understand why this is such an easy call, Ohlhausen recommended replacing "algorithm" with " 'a guy named Bob' ":

> Is it ok for a guy named Bob to collect confidential price strategy information from all the participants in a market, and then tell everybody how they should price? If it isn't ok for a guy named Bob to do it, then it probably isn't ok for an algorithm to do it either.[15]

This approach reflects the longstanding antitrust principle that "competitors cannot simply get around antitrust liability by acting through a third-party intermediary or joint venture."[16]

Consistent with this interpretation, the U.S Department of Justice (USDOJ) and several states, including California, have filed an antitrust lawsuit against RealPage and several property management companies.[17] According to the First Amended Complaint, RealPage's Vice President of Revenue Management Advisory Services described RealPage's benefit to landlords thusly: " '*[T]here is greater good in everybody succeeding versus essentially trying to compete against one another* in a way that actually keeps the entire industry down.' "[18] At the time this analysis was released, RealPage's motion to dismiss was pending before the court.

Rather than wait for the results of the lawsuit against RealPage, San Francisco enacted an ordinance prohibiting the sale or use of algorithms that use nonpublic competitor data to set rental terms or occupancy levels.[19] This bill's language is similar to, but broader than, the San Francisco ordinance, as explained further in Part 5 of this analysis, below.

---

[13] Remarks of Maureen K. Ohlhausen, Acting Chairwoman, U.S. FTC, "Should We Fear The Things That Go Beep In the Night? Some Initial Thoughts on the Intersection of Antitrust Law and Algorithmic Pricing," Remarks from the Concurrences Antitrust Financial Sector Conference (May 23, 2017), p. 10, *available at* https://www.ftc.gov/news-events/news/speeches/should-we-fear-things-go-beep-night-some-initial-thoughts-intersection-antitrust-law-algorithmic.

[14] *Ibid.*

[15] *Ibid.*

[16] *Am. Needle, Inc. v. Nat'l Football League* (2010) 560 U.S. 183, 202 (cleaned up).

[17] *See U.S. v. RealPage, Inc.* (M.D.N.C.) Case No. 1:24-cv-00710-LCB-JLW.

[18] First Amended Complaint, Dkt. No. 47, *U.S. v. RealPage, Inc.* (M.D.N.C.) Case No. 1:24-cv-00710-LCB-JLW, ¶ 2 (emphasis in original).

[19] *See* S.F. Admin. Code, § 37.10C.

4. <u>California's housing crisis and sky-high rents</u>

As explained by the California Department of Housing and Community Development's most recent Statewide Housing Plan (SHP):

> California's housing crisis is half a century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs.[20]

The SHP reported that, to afford the rent for a two-bedroom apartment without being cost-burdened in 2022, a household would have to earn $81,191 per year, which translates to an hourly wage of $39.03.[21] The National Low Income Housing Coalition reports that, as of 2024, the two-bedroom wage has increased to $96,545 annually, or $47.38 hourly.[22] In certain Bay Area and Central Coast areas, the hourly wage needed to afford a two-bedroom apartment is above $60 dollars.[23] The statewide minimum hourly wage is currently $16.50,[24] except that fast-food workers must be paid at least $20 per hour,[25] and some localities have higher minimum wages ranging from $16.89 to $19.65.[26] "The top five most common occupations in California pay less than the wage needed to afford a home."[27]

Renters have to pay more for the simple reason that California does not have enough housing.[28] Against this backdrop of insufficient supply and sky-high demand, the author and sponsors argue that anticompetitive behavior by landlords exacerbates the pain already felt by Californians looking for a place to live. For example, the Los Angeles County Board of Supervisors writes:

> Algorithmic pricing tools may be used to exploit already strained rental housing markets, enabling owners and landlords to maximize profits in ways that do not

---

[20] California Department of Housing and Community Development, A Home for Every Californian: 2022 Statewide Housing Plan (2022) p. 4, *available at* https://statewide-housing-plan-cahcd.hub.arcgis.com/.
[21] *Id.* at p. 5.
[22] National Low Income Housing Coalition, Report: California (2024), pp. 1-2, *available at* https://nlihc.org/oor/state/ca.
[23] *Id.* at p. 1 (listing hourly housing wages for: Santa Cruz-Watsonville, at $77.96/hour; San Francisco, at $64/60; and San Jose-Sunnyvale-Santa Clara at $60.23).
[24] California Department of Industrial Relations, Labor Commissioner's Office, Minimum Wage, https://www.dir.ca.gov/dlse/minimum_wage.htm.
[25] *Ibid.*
[26] UC Berkeley Labor Center, Inventory of US City and County Minimum Wage Ordinances: California City and County Minimum Wages, January 1, 2025, https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/#s-2.
[27] A Home for Every Californian: 2022 Statewide Housing Plan, *supra*, at pp. 5-6.
[28] *Id.* at p. 23.

  reflect fair or reasonable market conditions. These inflated prices can exacerbate
  California's housing crisis and reduce prospective residents' access to stable,
  affordable housing.

5. <u>This bill expressly limits the use of residential rental pricing algorithms</u>

Because the Cartwright Act is drafted in broad terms, rather than prohibiting specific acts and practices, it can take time and substantial costs to litigate whether a specific business practice is covered by the Cartwright Act. This bill is intended to supplement, not displace, the Cartwright Act's application to algorithmic collusion and provide certainty in the market by expressly prohibiting algorithmic collusion in the residential rental market, whether deliberate or inadvertent. To that end, this bill imposes prohibitions on two types of rental pricing algorithms. The amendments discussed in this Part are set forth in Part 6, below.

First, the bill prohibits a person from selling, licensing, or otherwise providing a rental pricing algorithm with the intent that it be used by two or more persons in the same, or a related, market to recommend rental rates, lease terms, or occupancy levels for residential premises. To be clear, this does not prevent a person from offering multiple algorithmic products to multiple landlords within the same rental market; it simply prohibits a person from providing to multiple landlords a single algorithmic product that could, by virtue of the inputs received from those competing landlords, result in a sort of tacit collusive effect. The bill also prohibits a person from using such an algorithm to set rental rates, lease terms, or occupancy levels for a residential premises if that person knew, or should have known, that it was being offered or provided to other landlords in the same, or a related, market. Because the term "related market" is potentially ambiguous, the author has agreed to amendments that instead refer to a "housing provider" on a statewide basis.

Second, this bill prohibits a person engaged in the business of providing a rental housing algorithm that is used to set or recommend rental rates, lease terms, or occupancy levels for residential premises from using nonpublic competitor data pertaining to residential premises in the state as an input in the algorithm. "Nonpublic competitor data" is defined to include information that is not readily available to the public and that relates to the rental rates, lease terms, or occupancy rates of competitors in the same or a related rental market. The bill also specifies that information obtained from a range of publicly available sources, including industry reports and advertisements, or from disaggregated data sources, is not considered "nonpublic."[29]

The bill provides two enforcement mechanisms. The Attorney General, a city attorney, or a county counsel may file a civil action for damages, injunctive relief, restitution, or

---

[29] The California Apartment Association, in an "oppose unless amended" letter, includes a list of information sources which they argue should not be considered nonpublic; the majority of the items on their list are, in fact, already expressly exempted from the definition of "nonpublic competitor data."

civil penalties for up to $1,000 per violation. The bill also provides a private right of action, permitting a person harmed by the violation to file their own civil action seeking the same remedies. A prevailing plaintiff shall be awarded reasonable attorney's fee and costs, and the bill specifies that a lease provision that limits a tenant from awarding attorney's fees shall not be enforceable against the tenant's claim. The author has agreed to amend the bill to specify that a person must have been harmed by the violation in order to file suit, and to amendments clarifying what constitutes a separate violation for purposes of the award of civil penalties.

Finally, the bill clarifies that the bill's prohibitions do not impair or limit the applicability of any antitrust laws, and that they apply in addition to, not in lieu of, any prohibition in state or federal antitrust laws. The author has agreed to amendments that clarify this provision further, to ensure there is no question as to this bill's additive effect.

As noted above, this bill is based on, but not identical to, a San Francisco ordinance adopted in 2024 that prohibits the use of "revenue management programs" that use algorithms to recommend prices or occupancy rates in rental housing.[30] This bill is broader insofar as it prohibits the use of a pricing algorithm to recommend or set leasing terms beyond rental rates, and this bill has more specific exemptions explaining what type of information is not "nonpublic data" or "nonpublic competitor data" covered by the bill.

5. Amendments

As noted above, the author has agreed to amend the bill to respond to stakeholder concerns and clarify certain provisions. The amendments are set forth below, subject to any changes the Office of Legislative Counsel may make.

Amendment 1

At page 4, in line 25, after "(d)" insert "(1) For a person who uses an algorithm in violation of this section, "; and in lines 25 through 27, delete ", and each residential premises for which the person uses the rental pricing algorithm,"

Amendment 2

At page 4, after line 28, insert:

> (2) Each month that a person sells, licenses, or otherwise provides, or each month that a seller uses, the rental pricing algorithm in violation of this section shall constitute a separate and distinct violation.

---

[30] *See* S.F. Admin. Code, § 37.10C.

(3) Each separate residential premises for which the pricing algorithm is sold, licensed, provided, or used shall constitute a separate and distinct violation.

Amendment 3

At page 5, in line 9, after "data" insert "derived from two or more persons, directly or indirectly,"

Amendment 4

At page 5, between lines 37 and 38, insert:

(2) "Antitrust laws" has the same meaning as defined in the Clayton Act (15 U.S.C. Sec. 12), and includes Section 45 of Title 15 of the United States Code, and this part, including provisions in this chapter, commonly known as the Cartwright Act.

Amendment 5

At page 5, delete line 39 after "public" and delete all of page 6, lines 1 and 2.

Amendment 6

At page 5, in line 29, after "person" insert "who is harmed by a violation of this section" and in lines 29 and 30, delete "for a violation of this section"

Amendment 7

At page 5, delete line 35 after "fees" and lines 36 and 37, and insert "or that caps the tenant's fee award shall be void as contrary to public policy in a tenant's claim against their landlord under this section."

6. Arguments in support

According to the bill's sponsors:

SB 52 allows landlords to use whatever data they want to make *independent* pricing decisions. The bill addresses when competitors are *coordinating* to make pricing decisions and establishes that regardless of the source of data, collusion is collusion.

Banning all of the ways that algorithms aid collusion is critical. Rental algorithm companies have stated that their software can help competitors maximize prices using just public data, and have suggested that policies banning only non-public data will not address housing affordability.

SB 52 also does not distinguish between whether a rental pricing algorithm "sets" a price or merely "advises" or suggests" a rental amount. As noted in DOJ lawsuits, whether there is full adherence to the price fixing scheme does not affect the legality; what matters is the existence of an agreement to fix the price, as that agreement distorts the competitive process whether binding or not…

SB 52 accounts for the various data inputs, interface designs, and contractual differences between various pricing algorithm models by focusing not on how they are designed (which is frequently changing and proprietary), but on the

7. Arguments in opposition

According to RealPage, Inc.:

Senate Bill 52 is overbroad and ambiguous. If passed in its current form, housing providers will be deprived of an important market analysis tool that is available to every other seller in virtually every other industry. The bill will encourage frivolous lawsuits against apartment owners and discourage badly needed investment in the state.

The definition of "rental pricing algorithm" as outlined in the bill is excessively broad and poorly defined, leading to significant risks of misapplication and unintended consequences. By encompassing "a service or product, including, but not limited to, an artificial intelligence, algorithmic program, or software tool," the bill indiscriminately includes a vast array of technologies, many of which may have no direct connection to rental pricing decisions. This sweeping inclusion creates unnecessary ambiguity, potentially ensnaring tools or products that analyze data without influencing rental pricing.

The bill could also be interpreted to ban the use of all external data—both public and nonpublic—in rental pricing algorithms. This interpretation would effectively function as a blanket prohibition on the use of pricing software in the rental industry. Such a restriction would deprive apartment owners of access to a widely utilized technology that has been around for more than two decades and remains commonplace in virtually every other industry where pricing decisions are made. The absence of these tools could hinder competitiveness and efficiency, leaving apartment owners at a technological disadvantage compared to sellers in other markets.

RealPage uses data responsibly to connect renters with homes quickly and efficiently, creating a win-win for both property owners and tenants. Unfortunately, SB 52 unfairly targets a key management tool used across the industry—one that helps address housing needs, not cause them. The bill is based on inaccurate assumptions and undermines innovation in housing access.

SUPPORT

ACCE (co-sponsor)
TechEquity (co-sponsor)
Western Center on Law and Poverty (co-sponsor)
AAPIs for Civic Empowerment
ACLU California Action
AIDS Healthcare Foundation
American Economic Liberties Project
BASTA, Inc.
Bay Area Legal Aid
California Center for Movement Legal Services
California Green New Deal Coalition
California Housing Partnership
California Rural Legal Assistance Foundation
CFT, a Union of Educators & Classified Professionals
Consumer Federation of California
Disability Rights California
Disability Rights Education and Defense Fund
East Bay Housing Organizations
Economic Security California Action
Evolve California
Green New Deal Coalition
Housing and Economic Rights Advocates
Housing California
Housing Now!
Human Impact Partners
Inner City Law Center
Kapor Center
Los Angeles County Board of Supervisors
Oakland Privacy
PICO California
PowerCA Action
UDW/AFSCME Local 3930
Urban Habitat

OPPOSITION

California Apartment Association
California Association of Realtors
RealPage, Inc.

RELATED LEGISLATION

Pending legislation:

SB 384 (Wahab, 2025) establishes the Preventing Algorithmic Price Fixing Act, which prohibits a business from using a price-fixing algorithm, as defined, to set a price or supply level of a good or service. SB 384 is pending before this Committee and is set to be heard on the same date as this bill.

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; requires a person using a pricing algorithm to recommend or set a price or commercial term to make certain commercial disclosures; and requires a person to provide specified information to the Attorney General relating to the use of pricing algorithms. 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 Privacy and Consumer Protection 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, which may be enforced by the Attorney General; established a partially rebuttable presumption that the use of a prohibited pricing algorithm is a violation of specified state laws prohibiting anticompetitive behavior; and added additional provisions relating to the Attorney General's investigation of, and disclosures of the use of, pricing algorithms. SB 1154 died in this 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.

****