

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

SB 295 (Hurtado)  
Version: April 10, 2025  
Hearing Date: April 29, 2025  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

California Preventing Algorithmic Collusion Act of 2025

**DIGEST**

This bill establishes the California Preventing Algorithmic Collusion Act of 2025, which prohibits the use or distribution of a pricing algorithm that uses, incorporates, or was trained with competitor data.

**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, the California Preventing Algorithmic Collusion Act of 2025, is intended as a consumer protection measure to supplement, not displace, the Sherman Act or its state counterpart, the Cartwright Act. To that end, this bill prohibits use or distribution of any pricing algorithm that uses, incorporates, or was trained on competitor data, and provides for enforcement in a civil suit brought by the Attorney General or a district attorney, and sets forth a range of forms of recovery that could be imposed for a violation of the bill. The author has agreed to amend the bill to narrow the definition of “competitor data,” add an actual knowledge requirement, remove the prohibitions on training, remove a reporting obligation, and modify the available remedies for a violation.

This bill is sponsored by the AIDS Healthcare Foundation and is supported by TechEquity Action. This bill is opposed by the American Property Casualty Insurance Association, the California Chamber of Commerce, the California Credit Union League, the California Hospital Association, the California Retailers Association, Chamber of Progress, the Civil Justice Association of California, Insights Association, the National Association of Mutual Insurance Companies, the Personal Insurance Federation of California, the Software Information Industry Association, and TechNet.

### **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.)
- 4) Establishes the Clayton Act. (15 U.S.C. §§ 12-27.)
- 5) Defines, under the Clayton Act, “antitrust laws” to include the Sherman Act, certain provisions of the Wilson Tariff Act, and the Clayton Act, as amended. (15 U.S.C. § 12.)
- 6) Makes illegal, under the Clayton Act, certain exclusive dealing agreements, tying contracts, corporate mergers and acquisitions, and interlocking directorates, as specified. (15 U.S.C. §§ 13-14.)

Existing state law:

- 1) Prohibits that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is, to that extent, void, including specified noncompete clauses, subject to specified exemptions. (Bus. & Prof. Code, pt. 2, ch. 1, §§ 16600 et seq.)
- 2) Establishes the Cartwright Act. (Bus. & Prof. Code, div. 7, pt. 2, ch. 2, §§ 16700 et seq.)
- 3) Defines “person” within the Cartwright Act to include corporations, firms, partnerships, and associations. (Bus. & Prof. Code, § 16702.)
- 4) 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.)
- 5) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)

- 6) Permits the head of any department in the state to make investigations and prosecute actions concerning violations of law; as part of those investigations, the department head may inspect and copy books, records, and other items, issue subpoenas for the attendance of witnesses and the production of documents or other tangible things, and promulgate interrogatories. (Gov. Code, §§ 11180, 11181.)
- 7) For purposes of investigating potential violations of the Cartwright Act, extends all of the investigative powers granted to the Attorney General pursuant to 7) to the district attorney of any county when the district attorney reasonably believes that a violation has occurred. (Bus. & Prof. Code, § 16759(a).)

This bill:

- 1) Establishes the California Preventing Algorithmic Collusion Act of 2025.
- 2) Defines the following terms:
  - a) “Antitrust laws” has the same meaning as defined in the Clayton Act, and includes Section 15 of Title 15 of the United States Code and the Cartwright Act.
  - b) “Commercial term” means any of the following: (1) level of service; (2) availability; (3) output, including quantities of products produced or distributed or the amount or level of service provided; or (4) rebates or discounts made available.
  - c) “Competitor data” includes nonpublic and public information, when the public information, through aggregation and algorithmic processing becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data. Public information becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data if it enables an inference or prediction of a competitor’s pricing, output, or strategic behavior in a way that facilitates tacit or explicit coordination.
  - d) “Distribute,” “distribution,” and “distributing” include selling, licensing, providing access to, or otherwise making available by any means, including through a subscription or the sale of a service.
  - e) “Person” has the same meaning as in Section 16702 of the Business and Professions Code.
  - f) “Price” means the amount of money or other thing of value, whether tangible or not, expected, required, or given in payment for any product or service, including compensation paid to an employee or independent contractor for services provided.
  - g) “Pricing algorithm” means any computational process, including a computational process derived from machine learning or other artificial intelligence techniques, that processes data to recommend or set a price or commercial term within the jurisdiction of this state.

- 3) Provides that, upon written request by the Attorney General, pursuant to its investigatory authority under Section 11180 of the Government Code, a person shall, no later than 30 days after the date of the written request or any other later date approved by the Attorney General, provide to the Attorney General information relating to pricing algorithms.
  - a) The chief executive officer, chief economist, chief technology officer, or a corporate officer of similar authority of a person shall certify the accuracy of a report submitted to the Attorney General under 3).
  - b) Knowingly certifying the accuracy of false information under 3) shall be subject to a civil penalty of not more than \$1,500, in addition to any other civil remedies in law or equity which might be available.
- 4) Provides that nothing in 3) shall be construed to limit or impair the Attorney General's authority under existing law, including, but not limited to, the Government Code and the antitrust laws.
- 5) Prohibits a person from using or distributing a pricing algorithm that uses, incorporates, or was trained with, competitor data.
- 6) Prohibits a person from distributing a pricing algorithm, or making recommendations based on the use of a pricing algorithm that uses, incorporates, or was trained with competitor data, to two or more persons with the intent or reasonable expectation that the pricing algorithm or its recommendations be used to set the price or commercial term of a product or service in the same market or a related market.
- 7) Prohibits a person from using a pricing algorithm or the recommendation of a pricing algorithm that uses, incorporates, or was trained with competitor data to set a price or commercial term of a product or service if the pricing algorithm or the recommendation of the pricing algorithm was used by another person to set or recommend a price or commercial term of a product or service in the same or a related market.
- 8) Permits the Attorney General or a district attorney to bring a civil action for a violation of 5)-7) in any court of competent jurisdiction to seek to recover, as applicable, one or more of the following:
  - a) A civil penalty of either (1) not less than \$10,000, adjusted for inflation on the basis of the California Consumer Price Index, for each day during which the violation occurs or continues to occur; or (2) the sum of the price of each product or service sold using the prohibited algorithm.
  - b) Forfeiture of charter rights, franchises, or privileges and powers exercised by a defendant corporation or association, and for the dissolution of the corporation or association.

- c) Revocation of the powers, franchises, or functions of a defendant corporation or association; upon revocation, the foreign corporation or association shall be prohibited from doing any business in this state, and upon receipt of a certified copy of the judgment ordering such a revocation, the Secretary of State shall revoke the license as ordered.
  - d) Reasonable attorney's fees and costs.
  - e) Other appropriate relief, including an injunction or equitable relief.
- 9) Provides that any injunction issued pursuant to 8)(e), whether interim or final, shall cover every article, product, or service, and not merely the particular article, product, or service involved in the action; "article, product, or service" includes, among other things, a pricing algorithm.
- 10) Provides that any person who, either as a director, officer, or agent of any firm or corporation, or as an agent of any person, that violates 5)-7), assists or aids, directly or indirectly, in that violation is responsible therefor equally with the person, firm, or corporation for which they act.
- 11) Provides that nothing in 8)-10) shall impair or limit the applicability of antitrust laws.
- 12) Requires a person that has \$5 million or more in annual revenue that uses a pricing algorithm to recommend or set a price or commercial term shall make, in a clear manner, the following disclosures:
  - a) To a customer, before the customer purchases the relevant product or service, that the price or a commercial term, as applicable, is set or recommended by a pricing algorithm.
  - b) To a current or prospective employee or independent contractor that the price or commercial term for services rendered as an employee or independent contractor is set or recommended by a pricing algorithm.
- 13) Requires, as applicable, a disclosure under 12) shall state that the pricing algorithm sets or recommends different prices for the following:
  - a) Different customers seeking identical or nearly identical products or services.
  - b) Employees or independent contractors providing substantially similar services.
- 14) Requires, as applicable, a disclosure under 12) to state that the pricing algorithm was developed or distributed by a person other than the person making the disclosure, and to provide the identity of the person that developed or distributed the algorithm.
- 15) Provides that, if the Attorney General has reason to believe that a person has violated 12)-14), the Attorney General may bring a civil action against the person in

any court of competent jurisdiction in this state to seek or recover one or both of the following:

- a) A civil penalty of not less than \$5,000, adjusted for inflation on the basis of the California Consumer Price Index, for each day during which the violation occurs or continues to occur.
- b) Other appropriate relief, including an injunction or other equitable relief.

16) Provides that nothing in 12)-15) shall impair or limit the applicability of antitrust laws.

17) Provides that a contract that violates a provision of the California Preventing Algorithmic Collusion Act of 2025 is void.

### COMMENTS

#### 1. Author's comment

According to the author:

Technology is advancing faster than our laws, and SB 295, the California Preventing Algorithmic Collusion Act of 2025, ensures AI isn't used to manipulate markets and exploit consumers.

Traditionally, price-fixing required secret meetings between competitors. Today, algorithms do the colluding – analyzing competitor data, predicting behavior, and adjusting prices in near real-time. This creates a new form of price-fixing that's harder to detect but just as harmful.

The impact is real. Grocery prices have soared as a few corporations dominate the market. Rent prices are artificially inflated by algorithmic tools coordinating hikes among landlords. Online and travel industries use AI-driven pricing to squeeze consumers. Without action, these trends will only worsen. SB 295 stops AI-driven collusion before it becomes the norm. It bans pricing algorithms from using competitor data to fix prices, mandates transparency from companies using these tools, and gives the Attorney General the power to enforce violations.

California has led in innovation and consumer protection – and we must continue to lead. Unchecked AI pricing will erode competition, drive up costs, and harm consumers.

## 2. Background on price-fixing algorithms

“Pricing algorithms are intended to help firms determine optimal pricing on a near real-time basis.”<sup>1</sup> 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 instantaneously in response to new information.<sup>2</sup> Studies indicate that the use of certain pricing algorithms results in higher prices for consumers,<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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. Antitrust law and algorithms

Under the federal Sherman Act,<sup>6</sup> “[horizontal] price-fixing agreements are unlawful per se.”<sup>7</sup> 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.<sup>8</sup> Likewise, under the State’s own antitrust law, the Cartwright Act,<sup>9</sup> “agreements fixing or tampering with prices are illegal per se.”<sup>10</sup>

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<sup>1</sup> 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 24, 2025.

<sup>2</sup> *Ibid.*

<sup>3</sup> Calvano, et al., *Artificial Intelligence, Algorithmic Pricing, and Collusion* (2020) 110 Am. Econ. Rev. 3267.

<sup>4</sup> 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4144905).

<sup>5</sup> Calvano, *supra*, at p. 3268.

<sup>6</sup> 15 U.S.C. §§ 1-7.

<sup>7</sup> *U.S. v. Socony-Vacuum Oil Co.* (1940) 310 U.S. 150, 218.

<sup>8</sup> *Id.* at p. 223.

<sup>9</sup> Bus. & Prof. Code, pt. 2, ch. 2, §§ 16700 et seq.

<sup>10</sup> *Oakland-Alameda County Builders’ Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 363.



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>11</sup> The Cartwright Act’s prohibitions on anticompetitive behavior are “broader and deeper in range” than the federal Sherman Act’s.<sup>12</sup>

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 matter, new territory.<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup>

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.”<sup>16</sup>

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.<sup>17</sup> 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

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

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

<sup>13</sup> 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>.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Am. Needle, Inc. v. Nat’l Football League* (2010) 560 U.S. 183, 202 (cleaned up).

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

actually keeps the entire industry down.’ ”<sup>18</sup> At the time this analysis was released, RealPage’s motion to dismiss was pending before the court.

4. This bill establishes the California Preventing Algorithmic Collusion Act of 2025

a. *The prohibition on pricing algorithms*

This bill prohibits any person from using or distributing an algorithm that uses, incorporates, or was trained on “competitor data.” The breadth of the bill hinges on the definition of “competitor data,” which is broken into two parts:

- “Competitor data” means “nonpublic and public information, when the public information, through aggregation and algorithmic processing becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data.”
- Public information becomes “functionally equivalent to nonpublic, proprietary, or competitively sensitive data” if it enables an inference or prediction of a competitor’s pricing, output, or strategic behavior in a way that facilitates tacit or explicit coordination.

The author’s stated intent, as set forth above in Part 1 of this analysis, is to protect consumers. There is a real concern, however, that the bill’s prohibition on the use of public data represents too far of a departure from existing law. Antitrust and other pro-competitive laws have historically distinguished between conspiracies between competitors and businesses that take independent action based on their competitors’ publicly available information.<sup>19</sup> And while the bill does not expressly prohibit an algorithm that uses *any* public competitor inputs, the definitions are difficult to work as a practical matter. The bill’s opponents contend that the bill could lead to a prohibition on all pricing algorithms that incorporate, or were trained on, any competitor behavior, including publicly posted prices – which could be a substantial majority of pricing algorithms. It is unclear to what extent this bill would actually harm pro-competitive, rather than anti-competitive algorithms, but the ambiguity raises concerns.

To avoid these issues, the author has agreed to amend the bill to define “competitor data” as follows:

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<sup>18</sup> 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).

<sup>19</sup> E.g., *Bell Atlantic v. Twombly* (2007) 550 U.S. 544, 553 (The “crucial question” for a Sherman Act claim is “whether the challenged anticompetitive conduct stems from an independent decision or from an agreement, tacit or express”) (cleaned up); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 862-863 (summary judgment for defendants on Cartwright Act claim was proper when plaintiff failed to introduce evidence excluding the possibility that defendants “acted independently rather than collusively”); see also *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1, 8 (Cartwright Act requires proving the formation and operation of a conspiracy to restrain trade).

“Competitor data” includes the confidential, competitively sensitive information of two or more competitors in the same market. For purposes of this chapter, the user of the pricing algorithm is considered a competitor if the user provides confidential, competitively sensitive information for use in, or incorporation by, the algorithm, or competes with one or more entity that provides confidential, competitively sensitive information for use in, or incorporation by, the algorithm”

Using the revised definition, the amendments prohibit the use or distribution of a pricing algorithm which the person has actual knowledge uses or incorporates competitor data. The amendments also delete the existing enforcement language and instead permit the Attorney General or district attorney to seek any of the civil remedies available under the Cartwright Act. Finally, the amendments delete a reporting requirement that would have applied to all businesses with \$5 million or more in annual revenues using price-setting algorithms. A full mock-up of the amendments are set forth in Appendix A of this analysis.

5. This bill is similar, but not identical, to SB 1154 (Hurtado, 2024)

In 2024, this Committee heard, but did not vote on, SB 1154 (Hurtado, 2024). SB 1154 and this bill are both styled as California Preventing Algorithmic Collusion Acts, and both prohibit the use of certain algorithms to set commercial prices. There are, however, a few key differences between the bills.

SB 1154 targeted algorithms that incorporate nonpublic competitor data, as defined. This bill, as the author has agreed to amend it, prohibits algorithms that use or incorporate confidential, competitively sensitive data. This is a somewhat narrower, but more precise, prohibition. SB 295, as it will be amended, also includes an actual knowledge requirement.

With respect to the penalties, this bill in its to-be-amended form is also narrower than SB 1154. SB 1154 included a presumption that a violation of its prohibitions constituted a violation of several other statutes, and also imposed a daily civil penalty of \$10,000 with no maximum cap. This bill, as the author has agreed to amend it, has no presumption, and allows the Attorney General or a district attorney to recover the greater of actual damages or a civil penalty of up to \$1 million, plus injunctive relief and attorney’s fees and costs.

SB 295 also imposes fewer obligations than SB 1154 with respect to the Attorney General. SB 295, rather than imposing an entirely new investigatory regime, relies on the Attorney General’s existing powers under the Government Code;<sup>20</sup> and SB 295 does not require the Attorney General to conduct a study or post information on its website.

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<sup>20</sup> See Gov. Code, § 11180.

Finally, SB 1154 included an obligation for a business with \$5,000,000 in revenue to disclose their use of algorithms, as specified; the author has agreed to amend that portion out of this bill.

## 6. Arguments in support

According to the bill's sponsor, the AIDS Healthcare Foundation:

While the bill is not specific to any industry, it is the use of algorithms in the setting of rental prices that best illustrates the problem that SB 295 seeks to address.

The State of California has a massive problem with people who are homeless or at risk of homelessness. More than 187,000 Californians are homeless, 44% of Californians rent rather than own their homes, 56% of renter households are rent burdened (spending 30% of their income on rent) and 30% are severely rent burdened (spending 50% of their income on rent). According to [ipropertymanagement.com](http://ipropertymanagement.com), the fair market rent for a 2 bedroom in California has increased 31% over the past 5 years.

Exacerbating this problem is the recent adoption of algorithm software offered by software companies that provide landlords with non-public competitively sensitive data to set rental rates that promise revenue growth even in a down market. Texas-based RealPage is the national leader in algorithmic rent-setting software, promising to "drive outperformance by 2%-7%" through their YieldStar and AI Revenue Management (AIRM) software.

AIRM and YieldStar collect data, such as rental applications, new leases, renewals, concessions, amenities and occupancy rates, directly from competing landlords and use it to generate price recommendations for their clients. They then make it easier for those clients to accept price recommendations to decline them...

Rather than waiting years for litigation by USDOJ, as well as similar litigation in Arizona and the District of Columbia, to wend their way through the courts, SB 295 amends state law to expressly prohibit the use of algorithmic software to set prices, including rates for rental housing. Every day we wait to stop this pernicious practice the greater harm will befall California renters.

## 7. Arguments in opposition

According to a coalition of the bill's opponents:

As amended on April 10, SB 295 now provides for a definition of "competitor data" that not only is overly broad and vague, but that also intentionally

captures public data – and it does so in a manner that turns public data completely on its head. Specifically, “competitor data” both includes nonpublic information regardless of whether it is proprietary or competitively sensitive data, and public information, “when the public information, through aggregation or algorithmic processing becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data”.

What this means, however, and where the line falls between public information that meets the “functionally equivalent standard and therefore “become[s]...nonpublic, proprietary, or competitive sensitive data,” and all other types of public information, is entirely unclear.

Unfortunately, the second half of SB 295’s “competitor data” definition does not provide the necessary clarity and objective standards that are missing from the first, nor does it narrow the scope of the term in any reasonable way. It states merely that “public information becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data if it enables an inference or prediction of a competitor’s pricing, output, or strategic behavior in a way that facilitates tacit or explicit coordination.”

Indeed, as drafted, the mere act of a business looking at the public prices of competitors and using an algorithm to do so when setting its own prices, would seemingly fall within the “functionally equivalent” definition. This includes, for example, even typical price-matching strategies that a business might employ, if the mere act of looking at competitors’ advertised prices and using an algorithm to do so when setting one’s own prices could fall within the scope of the “functional equivalent” standard and the “competitor data” definition.

### **SUPPORT**

AIDS Healthcare Foundation (sponsor)  
TechEquity Action

### **OPPOSITION**

American Property Casualty Insurance Association  
California Chamber of Commerce  
California Credit Union League  
California Hospital Association  
California Hotel & Lodging Association  
California Retailers Association  
Chamber of Progress  
Civil Justice Association of California  
Insights Association  
National Association of Mutual Insurance Companies

Personal Insurance Federation of California  
Software Information Industry Association  
TechNet

### **RELATED LEGISLATION**

#### **Pending legislation:**

SB 763 (Hurtado, 2025) 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. SB 763 is pending before the Senate Public Safety Committee.

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 the Senate Appropriations Committee.

SB 52 (Pérez, 2025) prohibits the sale, licensing, or provision, to two or more persons, a rental pricing algorithm with the intent that it be used by two or more landlords in the same market to set or recommend specified rental terms, and prohibits the use of nonpublic competitor data in an algorithm used to set or recommend specified rental terms. SB 52 is pending before the Senate Appropriations 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 was substantially similar to this bill. SB 1154 died in this Committee. Part 5 of this analysis discusses SB 1154 in greater detail.

AB 2930 (Bauer-Kahan, 2024) would have prohibited a person or entity from using an automated decision tool, including an algorithm, in a way that results in algorithmic discrimination, as defined, in employment, educational, housing, and other contexts. AB 2930 died on the Assembly Floor.

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.

AB 331 (Bauer-Kahan, 2023) was largely similar to AB 2930 (Bauer-Kahan, 2024) and would have prohibited a person or entity from using an automated decision tool, including an algorithm, in a way that results in algorithmic discrimination, as defined, in employment, educational, housing, and other contexts. AB 331 died in the Assembly Appropriations Committee.

AB 2224 (McCarty, 2022) would have required online real estate platforms, known as iBuyers, that use algorithms to determine the value of a property and make offers to purchase a home without the use of a mortgage or other type of financing, to work with a local real estate broker when selling and completing a sale of real property in California. AB 2224 died in the Senate Business, Professions and Economic Development Committee.

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## **Appendix A**

The amendments to the bill are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make. Additions are in bold and underline; deletions are in strikethrough.

**The people of the State of California do enact as follows:**

**SECTION 1.** Chapter 8 (commencing with Section 17370) is added to Part 2 of Division 7 of the Business and Professions Code, to read:

### **CHAPTER 8. California Preventing Algorithmic Collusion Act of 2025**

**17370.** This chapter shall be known, and may be cited, as the “California Preventing Algorithmic Collusion Act of 2025.”

**17371.** For purposes of this chapter, the following definitions apply:

(a) “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 commonly known as the Cartwright Act (Chapter 2 (commencing with Section 16700)).

(b) “Commercial term” means any of the following:

(1) Level of service.

(2) Availability.

(3) Output, including quantities of products produced or distributed or the amount or level of service provided.

(4) Rebates or discounts made available.

(c) “Competitor data” includes ~~nonpublic and public information, when the public information, through aggregation and algorithmic processing becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data. For purposes of this subdivision, public information becomes functionally equivalent to nonpublic, proprietary, or competitively sensitive data if it enables an inference or prediction of a competitor’s pricing, output, or strategic behavior in a way that facilitates tacit or explicit coordination.~~ **the confidential, competitively sensitive information of two or more competitors in the same market. For purposes of this chapter, the user of the pricing algorithm is considered a competitor if the user provides confidential,**



**competitively sensitive information for use in, or incorporation by, the algorithm, or competes with one or more entity that provides confidential, competitively sensitive information for use in, or incorporation by, the algorithm.**

(d) "Distribute," "distribution," and "distributing" include selling, licensing, providing access to, or otherwise making available by any means, including through a subscription or the sale of a service.

(e) "Person" has the same meaning as defined in Section 16702.

(f) "Price" means the amount of money or other thing of value, whether tangible or not, expected, required, or given in payment for any product or service, including compensation paid to an employee or independent contractor for services provided.

(g) "Pricing algorithm" means any computational process, including a computational process derived from machine learning or other artificial intelligence techniques, that processes data to recommend or set a price or commercial term within the jurisdiction of this state.

**17372.** (a) Upon written request by the Attorney General, pursuant to the investigatory authority granted under Section 11180 of the Government Code, a person shall, no later than 30 days after the date of the written request or any later date approved by the Attorney General, provide to the Attorney General information related to pricing algorithms.

(b) Nothing in this section shall be construed to limit or impair the Attorney General's authority under existing law, including, but not limited to, the Government Code and the antitrust laws described in Section 17371.

(c) (1) The chief executive officer, chief economist, chief technology officer, or a corporate officer of similar authority of a person shall certify the accuracy of a report under subdivision (a).

(2) Knowingly certifying the accuracy of false information under subdivision (a) shall be subject to a civil penalty of not more than one thousand five hundred dollars (\$1,500), in addition to any other civil remedies at law or equity that might be available.

**17373.** (a) A person shall not use or distribute any pricing algorithm **if the person has actual knowledge that the pricing algorithm** ~~that uses,~~ **or** incorporates, ~~or was trained with~~ competitor data.

(b) A person shall not distribute a pricing algorithm, or make recommendations based on the use of a pricing algorithm that uses, **or** incorporates, ~~or was trained with~~ competitor data, to two or more persons with the intent or reasonable expectation that

the pricing algorithm or its recommendations be used to set the price or commercial term of a product or service in the same market or a related market, **if the person has actual knowledge that the pricing algorithm uses or incorporates competitor data.**

(c) A person shall not use a pricing algorithm or the recommendation of a pricing algorithm that uses, ~~or incorporates, or was trained with~~ competitor data to set a price or commercial term of a product or service if the **person has actual knowledge that the pricing algorithm uses or incorporates competitor data and that the** pricing algorithm or the recommendation of the pricing algorithm was used by another person to set or recommend a price or commercial term of a product or service in the same market or a related market.

**17374.** (a) The Attorney General or a district attorney may bring a civil action for a violation of Section 17373 in any court of competent jurisdiction to seek to recover, as applicable:

**(a) (1) The greater of the actual damages caused by the violation or a civil penalty of up to \$1 million.**

**(2) In assessing the amount of the civil penalty pursuant to this subdivision, a court shall consider any relevant circumstances presented by any of the parties to the case, including, but not limited to, all of the following:**

**(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 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 with the Attorney General's or district attorney's investigation and litigation.**

**(b) Injunctive relief and other restraints as the court may deem expedient to deter the defendant from, and insure against, their committing a future violation of this chapter, including such mandatory injunctions as may be reasonably necessary to restore and preserve fair competition in the trade or commerce affected by the violation.**

**(c) Reasonable attorney's fees and costs.** ~~one or more of the following:~~

~~(1) A civil penalty of one of the following:~~

~~(A) Not less than ten thousand dollars (\$10,000), adjusted for inflation on the basis of the California Consumer Price Index, for each day during which the violation occurred or continues to occur.~~

~~(B) The sum of the price of each product or service sold using the pricing algorithm in violation of subdivision (a).~~

~~(2) Forfeiture of charter rights, franchises, or privileges and powers exercised by a defendant corporation or association, and for the dissolution of the corporation or association.~~

~~(3) Revocation of the powers, franchises, or functions of a defendant foreign corporation or association. Upon the revocation, the foreign corporation or association shall be prohibited from doing any business in this state. Upon receipt of a certified copy of the judgment and decree of any court of competent jurisdiction finding any foreign corporation or association guilty of violating this chapter and ordering a revocation of its powers, franchises, or functions of a corporation in this state, the Secretary of State shall revoke the license of any such corporation or association heretofore authorized to do business in this state.~~

~~(4) Reasonable attorney's fees and costs.~~

~~(5) Other appropriate relief, including an injunction or other equitable relief.~~

~~(b) Any injunction against a violation of this chapter, whether interim or final, shall cover every article, product, or service, and not merely the particular article, product, or service involved in the action. For purposes of this subdivision, "article, product, or service" includes, among other things, a pricing algorithm.~~

~~(c) Any person, who, either as a director, officer, or agent of any firm or corporation or as an agent of any person, violating the provisions of this chapter, assists or aids, directly or indirectly, in that violation is responsible therefor equally with the person, firm, or corporation for which they act.~~

~~(d) Nothing in this section shall impair or limit the applicability of antitrust laws.~~

**17375.** ~~(a) A person that has five million dollars (\$5,000,000) or more in annual revenue that uses a pricing algorithm to recommend or set a price or commercial term shall make, in a clear manner, the following disclosures:~~

~~(1) To a customer, before the customer purchases the relevant product or service, that the price or a commercial term, as applicable, is set or recommended by a pricing algorithm.~~

~~(2) To a current or prospective employee or independent contractor that the price or commercial term for services rendered as an employee or independent contractor is set or recommended by a pricing algorithm.~~

~~(b) (1) If applicable, a disclosure under subdivision (a) shall state that the pricing algorithm sets or recommends different prices for the following:~~

~~(A) Different customers seeking identical or nearly identical products or services.~~

~~(B) Employees or independent contractors providing substantially similar services.~~

~~(2) If applicable, a disclosure under subdivision (a) shall do both of the following:~~

~~(A) State that the pricing algorithm was developed or distributed by a person other than the person making the disclosure.~~

~~(B) Provide the identity of the person that developed or distributed the pricing algorithm.~~

~~(c) If the Attorney General has reason to believe that a person has violated subdivision (a) or (b), the Attorney General may bring a civil action against the person in any court of competent jurisdiction in this state to seek to recover one or both of the following:~~

~~(1) A civil penalty of not less than five thousand dollars (\$5,000), adjusted for inflation on the basis of the California Consumer Price Index, for each day during which the violation occurs or continues to occur.~~

~~(2) Other appropriate relief, including an injunction or other equitable relief.~~

~~(d) Nothing in this section shall impair or limit the applicability of antitrust laws.~~

**173756.** A contract that violates a provision of this chapter is to that extent void.

**173756. Nothing in this chapter shall impair or limit the applicability of the antitrust laws.**