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

SB 1074 (Wiener)
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Fiscal: Yes
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AWM

SUBJECT

Covered provider: goods and services: self-preferencing conduct

DIGEST

This bill prohibits an online platform owned or controlled by an entity with a market capitalization or private valuation of $1 trillion or more from (1) engaging in self-preferencing conduct, or (2) restricting the independence or interoperability of business users or customers on the platform; and authorizes persons harmed and specified public prosecutors to bring an action to enforce a violation of these prohibitions.

EXECUTIVE SUMMARY

California's primary antitrust law, the Cartwright Act, prohibits "trusts," or combinations of two or more persons, to restrain trade or commerce. Unlike the federal Sherman Antitrust Act, the Cartwright Act does not also prohibit conduct by a single company in restraint of trade, which generally occurs when one corporation has monopolistic or monopolistic market power and can impose anticompetitive measures on the market and on consumers.

Over the course of this century, a handful of tech companies have been able to amass massive market power through a combination of innovation, sprawling product ranges that keep users inside a company's ecosystem, and buying up competitors. Whether these acquisitions should have been permitted under federal antitrust law is another question; the reality for Californians today is that the tech landscape is dominated by a handful of firms.

The author and sponsors of the bill believe that these biggest of the tech giants—Alphabet/Google, Amazon, Apple, Meta, and Microsoft—have business models built on the suppression of competition through self-preferencing tactics. These self-preferencing practices include manipulating search rankings to prioritize their own products and services; using consumer data collected from third-party businesses on

their platforms to enhance their own business; and restricting interoperability, thereby preventing third parties from developing apps and tools that can work with the provider's platform or device. The author and sponsors argue that these tactics harm competition and consumers by suppressing, or destroying, small businesses; preventing the development of superior competing products; and artificially inflating prices.

This bill adds new provisions that would prohibit companies with a valuation of $1 trillion or more from engaging in self-preferencing conduct and restricting the independence or interoperability of business users on the platform. The bill provides a safe harbor if a platform can show that its conduct was narrowly tailored and that the procompetitive justifications outweigh the competitive harms. The bill imports the enforcement and remedial mechanisms from the Cartwright Act, meaning a violator can be held both criminally and civilly liable for a violation of this bill.

This bill is sponsored by Economic Security California Action and Y Combinator, and is supported by over 275 organizations and businesses. This bill is opposed by 29 organizations and businesses and 2 individuals If this Committee passes this bill, it will be referred to the Senate Privacy, Digital Technologies, and Consumer Protection 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) Prohibits, under the Sherman Act:
    a) 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.)
    b) The monopolization, or attempt to monopolize, or combination or conspiracy with any other persons to monopolize, any part of the trade or commerce among the states, or with foreign nations. (15 U.S.C. § 2.)

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 or the Clayton 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 $6 million or the amount under 9)(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 than $1 million or the amount under 9)(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, in any civil action for a violation of the Cartwright Act brought by the Attorney General or a district attorney, a civil penalty of not more than $1 million shall be assessed, as determined by a court or jury based on specified enumerated factors. (Bus. & Prof. Code, § 16755.1.)

This bill:

1) Defines the following terms:
   a) "Artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.
   b) "Business user" means a person or entity that uses a covered platform for the purpose of connecting with consumers or other business users to provide products or services, including a person for whom a covered platform provides access to users or customers.

c) "Nonpublic business user data" means data generated by the activities of a business user on a covered platform that is not made publicly available by the covered platform to all similarly situated business users on equivalent terms.
d) "Consumer" means a natural person who uses a covered platform for purposes other than as a business user.
e) "Covered platform" means a digital interface that allows business users or sellers to connect with consumers or other business users in the state and that meets both of the following:
    i. The platform, at any time in the last 24 months, had an average of 100,000,000 or more monthly active users in the United States.
    ii. The platform is either (1) at any point prior to January 1, 2030, owned, controlled, or operated by an entity or person that in the last 24 months has had an average of $1 trillion or greater in market capitalization, or (2) at any point on or after January 1, 2030, is owned, controlled, or operated by an entity or person that in the last 24 months has had an average of $1 trillion or greater in market capitalization or private valuation.
f) "Covered provider" means a person or entity that owns, controls, or operates a covered platform.
g) "Most favored nation clause" means a clause in a contract that gives a party to the contract the legal right to terms and benefits under the contract that are as good as or more favorable than the terms and benefits received by anyone else who enters into a similar contract with the other party.
h) "Self-preferencing conduct" means a practice by which a covered provider treats its own products, services, lines of business, or content more favorably than comparable products, services, or content of a business user, whether implemented through ranking, display, algorithmic recommendation, technical access conditions, integration depth, default status, or any other means of determining the relative visibility, accessibility, or prominence of products, services, or content on or through the covered platform.

2) Prohibits a covered provider from engaging in self-preferencing conduct.

3) Provides that prohibited conduct under 2) includes, but is not limited to, all of the following:
    a) Manipulating the order of search results or rankings to favor the products or services of the covered provider.
    b) Exploiting transaction data or nonpublic proprietary data collected from a third-party seller to market or develop the products of the covered provider.
    c) Employing policies or practices that cause a business user to operate at an unreasonable cost disadvantage relative to the covered provider.
    d) Favoring a company on the platform based on the profit margin returned to the covered provider.

e) Conditioning platform access or preferred status or placement on the covered placement on the purchase or use of other products or services offered by the covered provider, where a materially less restrictive means of achieving any legitimate integration objective is available.
f) Requiring most-favored-nation clauses or margin guarantees that restrict the ability of a business user to set their own prices.
g) Providing an agent or third-party service financed in a manner that creates a conflict of interest between the user and the covered provider.

4) Prohibits a covered provider from restricting the independence or interoperability of business users and consumers on the platform.

5) Provides that prohibited conduct under 4) includes, but is not limited to, all of the following:
a) Restricting, impeding, or unreasonably delaying a business user from interoperating with the same platform features, operating systems, or hardware available to the covered provider's own lines of business.
b) Restricting a business user or consumer from obtaining a copy of their data in a useful and portable format.
c) Restricting a consumer from voluntarily providing data through a covered platform to a third party.
d) Designing, deploying, or utilizing AI in a manner that systematically favors the products, services, content, or commercial partners of the covered platform over those of third parties, including through the use of a generative AI summary, recommendation engine, conversational agent, or shopping assistant; but this prohibition does not apply if the covered platform demonstrates that it consistently applies a neutral methodology to both its own and third-party content and that any differential treatment results solely from that neutral methodology and not form the commercial interests of the covered platform.

6) Provides that in any action brought to enforce 2)-5), it shall be an affirmative defense if the defendant establishes both of the following:
a) The alleged conduct was narrowly tailored, nonpretextual, and reasonably necessary to achieve a procompetitive purpose.
b) The procompetitive justifications and actual effects of the conduct clearly outweigh the competitive harms in the same market.

7) Provides that 2)-5) shall not be construed to prohibit a covered platform from displaying objective information that is susceptible to a singular result, including mathematical calculations, the current time, standard unit conversions, and publicly available, contemporaneous data feeds that are displayed without the exercise of editorial judgment, if both of the following conditions are met:

a) The display does not systematically displace a competitive market for the provision of that information.
b) The covered platform does not apply differential treatment to comparable information provided by a third party.

8) Provides that an action to enforce 2)-5) may be brought by any person, entity, or public officer authorized to bring an action under the Cartwright Act.

9) Provides that a covered provider who violates 2)-5) shall be liable for the same penalties, damages, and fees as those provided under the Cartwright Act.

10) Provides that the remedies and penalties provided by 2)-9) are cumulative to each other and to the remedies or penalties available under all other laws of this state, including, but not limited to, the Cartwright Act, the Unfair Practices Act, and the Unfair Competition Law.

11) Includes a severability clause.

COMMENTS

1. Author's comment

According to the author:

> SB 1074 defines prohibited self-preferencing conduct and ties enforcement of the prohibitions by qualifying platforms and providers to the Cartwright Act. Competition is central to American enterprise and has been a major contributor to California's growth as the fourth largest economy in the world. Self-preferencing is anti-competitive behavior that enables a dominant player in the market to further entrench their position and block out smaller businesses and new entrants.
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> Self-preferencing can take a variety of forms, but at its core is when a provider utilizes their platform to favor their own product or service to the detriment of competitors. When businesses that have veritable dominance over their sector engage in this behavior, it prevents smaller companies from partaking fairly in the markets. This results in demonstratable harms to consumers in the forms of higher prices, less innovation, and fewer freedoms.
>
> It is essential that California push back against anti-competitive behavior to protect Californians. Without competition there is no incentive for corporations to innovate and improve their product, to reduce prices, or to otherwise convince consumers that theirs is the best product. Instead, they are able to rely upon the freedom they have stolen from consumers and the predetermined outcomes which they have trapped them in. Dominant players can drive up prices by

stealing products from competitors, preferencing it on their platforms, and preventing their competitors from offering discounts which could attract customers. They can unequally apply hurdles to their competition and favor their own products or those of businesses which have struck deals with them.

SB 1074 is narrowly tailored to only apply to companies who have grown large enough and dominant enough that their behavior goes beyond simply advantaging themselves, but crosses into closing off the market and harming consumers. Without action to combat this noxious behavior, there will be stagnation in our economy, longstanding issues that plague consumers will continue to go unaddressed, and the state will only become further locked into a status quo that leaves all but those at the top frustrated.

2. Background on antitrust law and the problem of "bigness"

American antitrust laws were enacted in the Gilded Age as a response to the industrial monopolies that arose during the Industrial Revolution.[1] 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."[2]

The Sherman Act has two main components: Section 1, which prohibits combinations or conspiracies in restraint of trade;[3] and Section 2, which prohibits monopolies or attempted monopolies.[4] In the early 20th century, the United States Supreme Court adopted a "rule of reason" for Section 1 antitrust claims, which requires a plaintiff to show that a combination in restraint of trade was unreasonable, "either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal per se."[5] In the late 1970s, the Court also adopted Robert Bork's view that the Sherman Act was primarily a "consumer welfare prescription."[6] Under this approach, an act violates the Sherman Act "only when it harms both allocative efficiency *and* raises the price of goods above competitive levels or diminishes their quality."[7] Through these added requirements, the Court gave corporations significant leeway to vertically integrate[8]

[1] Simpson, *Ebbs and Flows in Antitrust Enforcement, and the Resurgence of Public Favor* (2022) 28 J.L. Bus. & Eth 109, 117-118.
[2] *Id.* at p. 121.
[3] 15 U.S.C. § 1.
[4] *Id.*, § 2.
[5] *U.S. v. Columbia Steel* (1948) 334 U.S. 495, 522.
[6] *See Reiter v. Sonotone Corp.* (1979) 442 U.S. 330, 343.
[7] *Rebel Oil Co., Inc. v. Atlantic Richfield Co.* (9th Cir. 1995) 51 F.3d 1421, 1433.
[8] *E.g.*, *Columbia Steel*, *supra*, 334 U.S. at p. 524.

and to achieve monopolies "from growth or development as a product of a superior product, business acumen, or historical accident."[9]

Some, like future Supreme Court Justice Louis Brandeis, argued that many "natural monopolies" were, in fact, unnatural, and that companies can achieve monopolistic status only through unlawful acts that harm competition.[10] Brandeis also warned against "excessive bigness," arguing that "the evils of excessive bigness are something distinct from and additional to the evils of monopoly," and that overly large corporations could harm both the economy and American democracy.[11] In an opinion dissenting to the Supreme Court's decision to allow U.S. Steel to further vertically integrate, Justice Douglas called back to Brandeis's warning:

> We have here the problem of bigness. Its lesson should by now have been burned into our memory by Brandeis. The Curse of Bigness shows how size can become a menace—both industrial and social…In final analysis, size in steel is the measure of the power of a handful of men over our economy. That power can be utilized with lightning speed. It can be benign or it can be dangerous. The philosophy of the Sherman Act is that it should not exist. For all power tends to develop into a government in itself. 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. [12]

California passed its own antitrust law, the Cartwright Act, in 1907.[13] The Sherman Act is complimentary to, and does not preempt, state antitrust laws such as the Cartwright

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[9] *E.g., U.S. v. Grinnell Corp.* (1966) 384 U.S. 563, 571-572; *see also Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP* (2004) 540 U.S. 398, 407 ("The opportunity to charge monopoly prices—at least for a short period—is what attracts "business acumen" in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct*.").
[10] *See* Brandeis, The Curse of Bigness: Miscellaneous Papers of Louis Brandeis (Fraenkel edit., 1934) p. 115.
[11] Louis D. Brandeis, *New England Railroad Situation*, Boston J. (Dec. 13, 1912); *see also, e.g.*, The Curse of Bigness, *supra*, at p. 107 ("The successful, the powerful trusts, have created conditions absolutely inconsistent with these—America's—industrial and social needs. It may be true that as a legal proposition mere size is not a crime, but mere size may become an industrial and social menace, because it frequently creates as against possible competitors and as against the employees conditions of such gross inequality, as to imperil the welfare of the employees and of the industry.").
[12] *Columbia Steel*, *supra*, 334 U.S. 495, 535-36 (dis. opn. of Douglas, J.).
[13] Stats. 1907, Ch. 530, §§ 1-12, pp. 984-987.

Act.[14] The Sherman Act and the Cartwright Act "have in common the goal of prohibiting trade-restraining combinations and monopolies and thereby preserving competition."[15] Nevertheless, "the Cartwright Act was not modeled on federal antitrust statutes but instead on statutes enacted by California's sister states around the turn of the 20th century."[16] One difference is that, while the Cartwright Act prohibits combinations in restraint of trade, similar to Section 1 of the Sherman Act, the Cartwright Act "generally does not apply to conduct by a single firm to monopolize, exclude its competitors, or cause other anticompetitive harms."[17] The Cartwright Act thus generally does not provide a remedy against corporations which harm competition or consumers through monopolistic or self-preferencing conduct.

3. The modern tech giants

In the 1990s and 2000s, the rise of the internet and online commerce threw established markets and businesses into chaos. The fast pace of advancements led to substantial churn in a short period of time; companies like AOL, MySpace, and Ask Jeeves came and went. "The chaos made it easy to think that bigness—the economies of scale—no longer really mattered in the new economy…maybe better to stay small and stay young, to move fast and break things."[18] But the chaos didn't last. A handful of firms survived, thrived, and achieved massive market dominance. They achieved their rapid growth in part because they were permitted to acquire their competitors, such as when Google bought YouTube[19] or Facebook bought Instagram.[20] In all:

> Facebook managed to string together 67 unchallenged acquisitions, which seemed impressive, unless you consider that Amazon undertook 91 and Google got away with 214 (a few of which were conditioned). In this way, the tech industry became essentially composed of just a few giant trusts: Google for search and related industries, Facebook for social media, Amazon for online commerce.[21]

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[14] *See Parker v. Brown* (1943) 317 U.S. 341, 351.
[15] *Knevelbaard Dairies v. Kraft Foods, Inc.* (9th Cir. 2000) 232 F.3d 979, 985.
[16] *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1195.
[17] *See* California Law Revision Commission, Preprint Recommendation, Antitrust Law: Single Firm Conduct (Mar. 2026) p. 3, *available at* https://clrc.ca.gov/pub/Printed-Reports/Pub249-B750.pdf. All links in this analysis are current as of April 10, 2026.
[18] Wu, The Curse of Bigness: Antitrust in the New Gilded Age (2018) p. 120.
[19] Sorkin & Peters, *Google to Acquire YouTube for $1.65 Billion* (Oct. 9, 2006) New York Times, *available at* https://www.nytimes.com/2006/10/09/business/09cnd-deal.html.
[20] Rusli, *Facebook Buys Instagram for $1 billion* (Apr. 9, 2012) New York Times, *available at* *https://archive.nytimes.com/dealbook.nytimes.com/2012/04/09/facebook-buys-instagram-for-1-billion/*.
[21] Wu, *supra* at p. 123. To be fair, it's not just the tech industry that's been allowed to rampantly consolidate. Between 1997 and 2012, market concentration increased in 75 percent of industries, including the airline industry, the pharmaceutical industry, and the global alcoholic beverage industry. (*Id.* at pp. 115-117.) Earlier this year, the Justice Department changed course and settled its antitrust case alleging that Ticketmaster is an illegal monopoly; over two dozen states, including California, plan to

While there have been some successful antitrust suits in the past 20 years, the courts have not taken steps to break up the tech trusts. Microsoft was found liable for violating the Sherman Act through its monopoly in the PC operating systems market,[22] but after George W. Bush was elected president, "his Justice Department decided to settle the Microsoft litigation[] instead of seeking the traditional breakup."[23] This decade, courts found that Google violated Section 2 by illegally monopolizing the online search market[24] and the online advertising technology market;[25] so far Google has not been required to break up or spin off certain subsidiaries to increase competition.[26] Additionally, a federal district court found that Apple violated California's Unfair Competition Law for anticompetitive practices related to its app store,[27] and then found Apple in contempt of court for violating the court's injunction and continuing to engage in anticompetitive practices.[28]

One of the bill's sponsors, Economic Security California Action, writes about the tactics used by the tech giants:

> In the tech sector, a small number of corporations have become so entrenched that they effectively control the entire industry, and self-preferencing is how they keep it that way. It shows itself in many forms:
> - Manipulating the order of search results to favor a provider's products or services
> - Using non-public data generated by third-party sellers—including sales volumes, pricing, and customer behavior—to develop or improve competing products
> - Employing policies, charges, or practices that put business users at an unreasonable cost disadvantage relative to the provider

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continue their own antitrust suits against Ticketmasater's parent company, LiveNation. (Richer & Neumister, *Justice Department and Live Nation reach settlement over illegal monopoly case* (Mar. 9, 2025) AP News, https://apnews.com/article/livenation-antitrust-justice-department-0a6ef66f497e5f626096de753bfff8ce.)

[22] *See U.S. v. Microsoft Corp.* (D.C. Cir. 2001) 253 F.3d 34, 46 (affirming district court's monopoly maintenance findings but reversing on tying and attempted monopoly claims).

[23] Wu, *supra*, at p. 101.

[24] *See United States v. Google LLC* (D.D.C. 2024) 747 F.Supp.3d 1.

[25] *See United States v. Google LLC* (E.D. Va. 2025) 778 F.Supp.3d 797.

[26] In the online search case, Judge Mehta entered injunctions prohibiting Google from engaging in specified anticompetitive behavior but did not require Google to divest Chrome; both sides have appealed. (*See United States v. Google LLC* (D.D.C. 2025) 803 F.Supp.3d 18.) In the advertising technology case, the court heard argument on the appropriate remedies in November of 2025 and has yet to issue its ruling; the Department of Justice and the other plaintiff-states (including California) asked the court to force Google to sell its ad exchange subsidiary. (Godoy, *Judge in Google ad tech case seeks quick fix for web giant's monopolies* (Nov. 21, 2025) Reuters, https://www.reuters.com/legal/litigation/google-aims-dodge-breakup-ad-business-antitrust-trial-wraps-2025-11-21.)

[27] *See Epic Games, Inc. v. Apple, Inc.* (9th Cir. 2023) 67 F.4th 946, 999.

[28] *See Epic Games, Inc. v. Apple, Inc.* (9th Cir. 2025) 161 F.4th 1162, 1172.

- Favoring the products of a company based upon the profit margin return to or paid to the provider
- Conditioning access or placement on the platform based on the purchase or use of a contract from the provider
- Requiring most-favored nation clauses or margin guarantees that restrict business users' ability to set their own prices on or off the platform

Many in the tech industry argue that the "tech monopoly" case is overstated, or that the rise of artificial intelligence (AI) has upended the tech sector. Google, writing in opposition to the bill, states:

> The AI revolution means that California's tech industry is in the midst of unprecedented competition. We're seeing a flood of venture capital investment in new companies providing innovative alternatives to the very platforms targeted by SB 1074. This makes SB 1074 fundamentally outdated; its concepts originated in 2021, predating the current AI era and the rise of tools like ChatGPT and Claude.

Others argue that we should stop worrying and learn to love monopolies. Peter Thiel, for example, in his "Competition is for Losers" essay, argued that "[m]onopolists can afford to think about things other than making money; non-monopolists can't…Only one thing can allow a business to transcend the daily brute struggle for survival: monopoly profits."[29]

4. <u>The European Union's Digital Markets Act (DMA)</u>

The European Union, in response to concerns like those set forth in Comment 3, above, enacted the DMA in 2022.[30] The DMA regulates "gatekeepers," identified as companies that "feature an ability to connect many business users with many end users through their services, which, in turn, enables them to leverage their advantages, such as their access to large amounts of data, from one area of activity to another."[31] The EU concluded that gatekeepers' hold on large segments of the digital landscape:

> …is likely to lead, in many cases, to serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users, as well as for end users of core platform services provided

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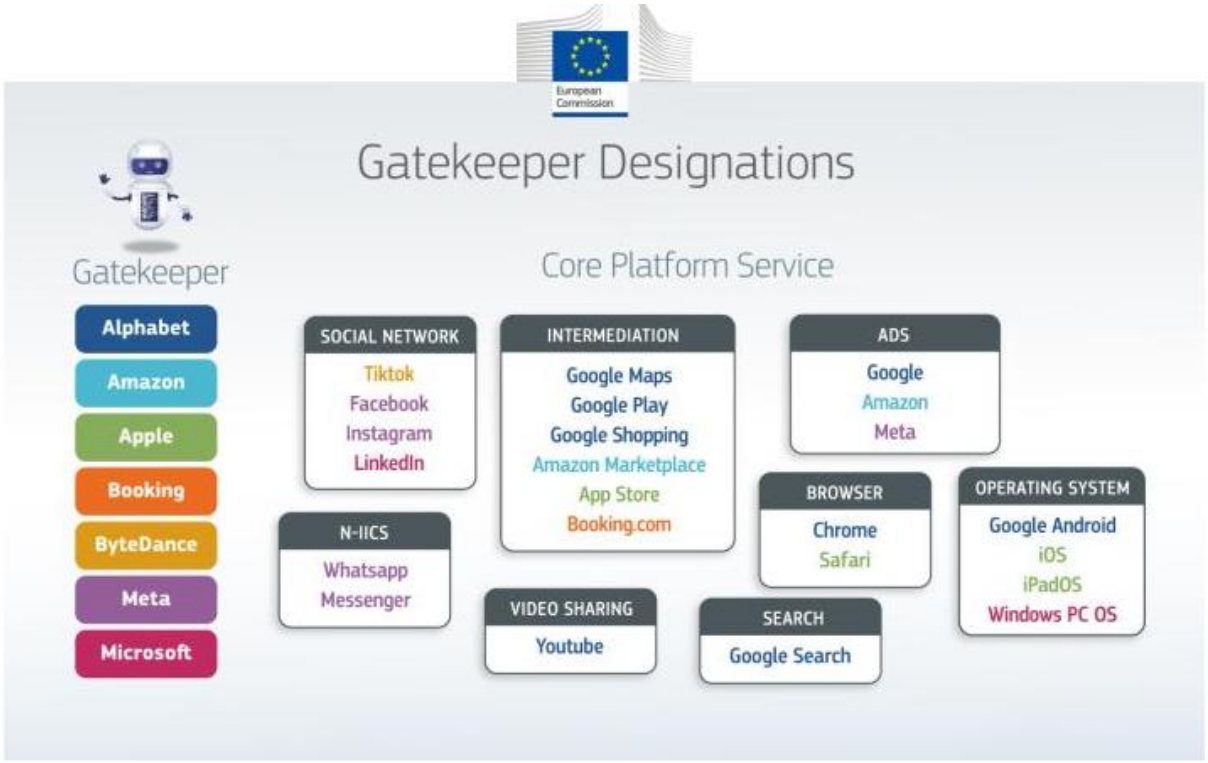
[29] Thiel, *Competition is for losers* (Sept. 12, 2014) Wall Street Journal, *available at* https://www.wsj.com/articles/peter-thiel-competition-is-for-losers-1410535536. The essay notes that "AT&T had a monopoly on telephone service for most of the 20th century, but now anyone can get a cheap cellphone plan from any number of providers," without noting that AT&T was forcibly broken up following an antitrust case in which they were found to be a monopoly. (*See id.*; Wu, *supra* at p. 96-97.)
[30] Regulation (EU) 2022/1925 of the European Parliament of the Counsel (Sept. 14, 2022), *available at* https://eur-lex.europa.eu/eli/reg/2022/1925/oj.
[31] *See id.*, ¶ 3.

> gatekeepers, to the detriment of prices, quality, fair competition, choice and innovation in the digital sector.[32]

The European Commission (EC), through an administrative process, has named six gatekeeper companies—Alphabet (née Google), Amazon, Apple, ByteDance, Meta, and Microsoft—and designated the "core platform services" provided by each company that are subject to specific DMA regulations.[33] The designated core platform services vary from company to company based on the market share of each service—for example, Google Search is designated as one of Alphabet's core platform services; but even though Microsoft is a gatekeeper, Microsoft's Bing search engine is not a "core platform service" because hardly anybody uses Bing.[34] The full map of gatekeepers and designated core platforms is set forth below:[35]



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[32] *Id.*, ¶ 4.

[33] *See* EC, DMA Gatekeepers Portal, https://digital-markets-act.ec.europa.eu/gatekeepers-portal_en. The EC considered naming Samsung as a gatekeeper, but decided against it; the EC also designated Booking's online travel reservations platform as a "core platform" even though it was not also named as a gatekeeper. (*See* EC, Press Release, Commission designates six gatekeepers under the Digital Markets Act (Sept. 6, 2023) https://digital-markets-act.ec.europa.eu/commission-designates-six-gatekeepers-under-digital-markets-act-2023-09-06_en.

[34] *See* EC, Cases: DMA.100015 Microsoft online search engines (Dec. 2, 2024) *available at* https://ec.europa.eu/competition/digital_markets_act/cases/202416/DMA_100015_700.pdf.

[35] The graphic is published on the European Commission's DMA Gatekeepers Portal, *supra*.

The DMA subjects gatekeepers to a wide range of requirements and prohibitions relating to data interoperability, self-preferencing, and data portability.[36] "Proponents of the DMA contend that this regulation will serve to complement the existing competition laws, reducing consolidation in digital markets and increasing consumer welfare."[37] Others are concerned that the DMA "includes adequate safeguards against potential misuse of power by the EC," and "[m]ore staunch opponents question whether the regulation is too aggressive or whether such regulations are necessary at all."[38] Some, including many opponents of this bill, argue that the DMA forces gatekeepers to make their platforms less convenient and less safe.[39]

In 2025, the EC issued the first-ever DMA fines: Apple was fined €500 million for continuing to restrict communications between users and developers in its app store, and Meta was fined €200 million for "imposing a 'consent or pay' system that forces users to either allow their personal data to be used to target advertisements or pay a subscription fee for advertising-free versions of Facebook or Instagram."[40] Both companies appealed the fines.

5. The American Innovation and Choice Online Act (AICOA)

In 2021, bipartisan legislation was introduced in the United States Senate and the House of Representatives—AICOA—which was "aimed at preventing dominant digital platforms form giving unfair preference to their own products and services over those of competitors."[41] The legislation was introduced following a bipartisan investigation into competition in the digital marketplace, which found:

> …significant evidence that several dominant online platforms possess gatekeeper power over segments of the digital economy, as well as the incentive and ability to use that power to enter and dominate adjacent or vertically related markets. As explained in the Digital Markets Report, the dominant online platforms investigated by the Committee each possess significant and durable market power, as well as the incentive and ability to abuse this power. Moreover, these platforms operate as gatekeepers over key channels of distribution and communication. When a large swath of the economy depends on particular platforms "to access users and markets," those platforms have "gatekeeper power to dictate terms

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[36] *E.g.*, Goicouria, Extraterritoriality in AI: Harmonizing the Digital Market Act and US Antitrust Law (Oct. 2025) 58 Vand. J. Transnat'l L. 1055, 1096-1097.
[37] *Id.* at p. 1097.
[38] *Ibid.*
[39] *E.g.*, Jebelli & Leford, Report: Europe's Digital Curtain (Dec. 2024) Chamber of Progress, *available at* https://progresschamber.org/research/europes-digital-curtain/.
[40] Satariano, *Apple and Meta Are First to Be Hit by E.U. Digital Competition Law* (Apr. 23, 2025) New York Times, https://www.nytimes.com/2025/04/23/technology/apple-meta-eu-fines-competition-law.html.
[41] Williams, *Antitrust Law Daily Wrap-Up* (Jun. 9, 2022) TR Daily, 2022 WL 2070983; *see also* H.R. 3816, 117th Cong. (2021-2022 reg sess.).

and extract concessions that third parties would not consent to in a competitive market."[42]

The United States Senate Judiciary Committee passed the Senate version of AICOA with a vote of 16-6, with Republicans including Chuck Grassley, Lindsey Graham, Ted Cruz, and Josh Hawley voting "aye."[43]

AICOA was similar to SB 1074 insofar as both bills prohibited very large tech companies from engaging in self-preferencing conduct and from materially restricting interoperability on their platforms, though the specific proscribed conduct varied between the bills.[44] AICOA's threshold for inclusion within the act was lower than SB 1074: it would have applied to companies with a market capitalization of $550 million, instead of SB 1074's $1 trillion market capitalization floor.[45] AICOA did not include a private right of action, and was instead enforceable only by the Attorney General or Federal Trade Commission.[46]

AICOA died on the Senate floor. Members of the California Congressional delegation expressed concern about the bill; for example, Representative Eric Swallwell opined that the bill "could have unintended cybersecurity consequences" due to the bill's interoperability requirements.[47] The bill ultimately died when Senate Majority Leader Chuck Schumer failed to bring the bill for a vote before the end of the Congressional term.[48]

6. The California Law Revision Commission's antitrust report and recommendations

In 2022, the Legislature adopted a resolution directing the California Law Revision Commission (CLRC) to study and report on the following topics:

- Whether California law should be revised to outlaw monopolies as outlawed by Section 2 of the Sherman Act.
- Whether California law should be revised specifically with respect to technology companies, so that analysis of antitrust injury in the tech context reflects competitive benefits such as innovation and ensuring that individuals have the

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[42] H.R. Com. on Judiciary, Report 117-655 (117th Cong, 2d sess.) Dec. 21, 2022 (internal citations omitted), *available at* https://www.congress.gov/committee-report/117th-congress/house-report/655/1.
[43] Feiner, *Senate committee votes to advance major tech antitrust bill* (Jan. 20, 2022) CNBC, https://www.cnbc.com/2022/01/20/senate-committee-votes-to-advance-major-tech-antitrust-bill.html.
[44] *See* S. 2992 (117th Cong. 2d sess.) as introduced, *available at* https://www.congress.gov/bill/117th-congress/senate-bill/2992/text/is.
[45] *See ibid.*
[46] *Ibid.*
[47] Swallwell, *The federal government must address national security concerns in antitrust reforms* (May 10, 2022) CyberScoop, https://cyberscoop.com/the-federal-government-must-address-national-security-concerns-in-antitrust-reforms/.
[48] Cortellessa, *Schumer Kills Bills Big Tech Fears Most, But Boosts Budgets of Agencies Targeting Them* (Dec. 11, 2023, updated Dec. 22, 2022) Time, https://time.com/6243256/schumer-kills-antitrust-big-tech-bills/.

freedom to start their own businesses, rather than solely asking whether such monopolies act to raise prices.

- Whether California law should be revised in any other fashion, such as requiring approvals for mergers and acquisitions and any limitation of existing statutory exemptions to the state's antitrust laws to promote and ensure the tangible and intangible benefits of free market competition for Californians.[49]

The CLRC released a pre-print version of its final report in March of 2026.[50] The CLRC notes that antitrust laws generally, both state and federal, "have not kept up with modern developments," particularly in the context of the digital economy.[51]

The CLRC concluded that California antitrust law needs an explicit provision addressing "single-firm conduct" (SFC) that harms competition and consumers. The report notes that "[t]he vertical integration of some of California's largest industries, as well as the sheer scale of certain digital platforms present unique competitive challenges not foreseen by the original antitrust law drafters."[52] Rather than import Section 2 verbatim, or start from scratch with entirely new antitrust language, the CLRC recommended a "hybrid approach that selectively draws on federal statutory and case law to ground the new California standard, while reflecting California's values and enforcement priorities by tailoring guidelines and definitions to California's specific concerns."[53]

On the question of whether an SFC prohibition should be specific to the tech industry, the CLRC said no: "exclusionary practices by dominant companies in every industry have the capacity to harm competition, so any new law should not single out individual sectors but apply to all."[54] The CLRC also decided against adopting an SFC framework adopting an "abuse of dominance" framework like that in effect in the European Union, on the basis that "the vagaries and arbitrary nature of establishing thresholds for substantial market power, use of differing standards of conduct, and other" efforts to do so in the United States have failed.[55]

The CLRC report recommends the addition of three new sections to the Cartwright Act to address harmful SFC, including monopolization and monopsonization[56] conduct,

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[49] ACR 95 (Cunningham, Res. Ch. 147, Stats. 2022).
[50] *See* California Law Revision Commission, Preprint Recommendation, Antitrust Law: Single Firm Conduct, *supra*. The CLRC approved the substance of the recommendation in the preprint version, but may still make minor editorial changes prior to releasing the final version. (*Id.* at cover page.)
[51] *Id.* at p. 5.
[52] *Id.* at p. 7 (internal citations omitted).
[53] *Id.* at p. 8.
[54] *Id.* at p. 9.
[55] *Ibid.*
[56] A "monopsony" is the inverse of a monopoly: instead of a market with lots of purchasers buying from one predominant seller (monopoly), a monopsony has a single buyer as the predominant purchaser of goods or services offered by many buyers.

across all industries.[57] AB 1776 (Aguiar-Curry, 2026), which is pending before the Assembly Appropriations Committee, sets forth the CLRC's recommended language nearly verbatim.

7. This bill prohibits the very largest corporations from engaging in self-preferencing practices on their own platforms

This bill is intended to rein in the tech giants by imposing targeted prohibitions on corporations with a valuation of $1 trillion or more. The overall approach is similar to the DMA, insofar as the bill applies only to a small number of companies whose size, under the theory of the bill, makes them uniquely able to harm competition and consumers. The bill would likely extend only to Google, Amazon, Apple, Meta, and Microsoft.

Under the bill, a covered company is prohibited from (1) engaging in self-preferencing conduct, and (2) restricting the independence or interoperability of business users and consumers on the platform.

"Self-preferencing conduct" is any practice of a platform by which it treats its own products and services better than those of other businesses on the platform, through tools like algorithmic presentation, technical access, display differences, etc. Examples of self-preferencing conduct in the bill include manipulating the order of search results or rankings to favor the products or services of the platform; requiring "most favored nation" clauses with business users of the platform, which generally prevent the business user from selling their products at a lower price on any other platform, including the business user's own website; and conditioning access to the platform, or preferred access to the platform, on the purchase or use of other products or services offered by the provider, even when less restrictive means are available.

"Restricting the independence or interoperability of business users and consumers on the platform" refers to practices that prevent third parties from developing tools that can be used with the provider's platform or devices. Examples include restricting, impeding, or unreasonably delaying a business user from interoperating with the same platform features, operating systems, or hardware that are available to the platform's own lines of business; restricting a consumer from voluntarily providing data through a covered platform to a third party; and designing, deploying, or utilizing AI in a manner that systematically favors the products, services, content, or commercial partners of the covered platform over those of third parties.

The bill's enforcement provisions are imported from the Cartwright Act enforcement regime. A violation of the bill will be deemed a conspiracy against trade and a crime,

[57] California Law Revision Commission, Preprint Recommendation, Antitrust Law: Single Firm Conduct, *supra*, at pp. 23-27.

and any person who engages in such a conspiracy, or participates in or aids and abets the conspiracy, can be punished as follows:

- If the violator is a corporation, by a fine of not more than $6 million or twice the violator's gain or pecuniary losses incurred as a result of the violation, whichever is greater.
- If the violator is an individual, by imprisonment of a term from one to three years, and/or by a fine of up to $1 million or twice the violator's gain or pecuniary losses incurred as a result of the violation, whichever is greater.[58]

Additionally, an action to enforce the bill can be brought by anyone who is authorized to bring a Cartwright Act action, and a provider found liable under this bill shall be liable for the same penalties, damages, and fees awardable in a Cartwright Act action. This means that a civil action to enforce the bill can be brought by: any person injured by a violation; the Attorney General, on behalf of the state or a political subdivision thereof, a class of residents of the state, or in the name of the people of the State as *parens patriae*; or a district attorney, on behalf of a county or city entity within its jurisdiction, or on behalf of the residents of the county as *parens patriae*.[59] A prevailing party can recover treble damages, preliminary and permanent injunctive relief, and attorney's fees and costs; the Attorney General can also obtain expanded injunctive relief, including mandatory injunctions, interest, and a civil penalty of not more than $1 million.[60]

The bill provides an affirmative defense, in any action brought by a covered provider, available if the defendant can establish both of the following:

- The alleged conduct was narrowly tailored, nonpretextual, and reasonably necessary to achieve a procompetitive purpose
- The procompetitive justifications and actual efforts of the conduct clearly outweigh the competitive harms in the same market.

The bill also specifies that it does not prohibit a provider from displaying objective information that is susceptible to a single result, such as the time, standard unit conversions, and other information that can be displayed without editorial judgment.

Opponents to the bill argue that the bill's prohibitions are vague, which will make it difficult for them to comply. Relatedly, they argue that the bill's private right of action will result in a glut of lawsuits, particularly because the bill's terms are wide enough to support allegations that business practices are self-preferencing; they argue that, even if the platform could ultimately prevail at trial, either by showing no violation or through the safe harbor, the cost of defense will force platforms to settle meritless cases.

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[58] *See* Bus. & Prof. Code, § 16755.
[59] *See id.*, §§ 16750, 16760.
[60] *Id.*, §§ 16750, 16754.5, 16755.1, 16760. A judge can also award, in their discretion, prejudgment interest. (*Id.*, § 16761.)

One other point of contention between the supporters and opposition the charge that this bill would "degrade" the user experience. Both sides agree that this bill would change how most users experience the internet, particularly Apple and Google users. The sides disagree, however—here and in the debate over the DMA—on whether a "seamless" user experience on a platform or in a device is a benefit that outweighs the cost of allowing the platform or device-maker to act as a gatekeeper. Is Apple's promise of providing a "curated" technology experience worth more than allowing users to pick and choose their own app store? Is it a problem that Google's own "Places" ranking service displays restaurant recommendations directly in a Google Search result, making it less likely that a user will scroll down to Yelp or Time Out? These are policy questions inherent to the bill.

8. Arguments in support

According to a coalition of over 250 trade associations, companies, and entrepreneurs:

> A small number of technology corporations have become so dominant that they function as essential infrastructure for the broader digital economy. We depend on them to reach customers, distribute products, and operate our businesses. That dependency creates a structural vulnerability: when the platform also competes with the businesses that rely on it, the incentive and the ability to tilt the playing field are both present. Self-preferencing — systematically favoring a platform's own products not on the merits but through structural advantages unavailable to competitors — is not a hypothetical concern. It is a daily operational reality for many of the businesses signing this letter.
>
> The conduct SB 1074 addresses has been fined and litigated across multiple jurisdictions. U.S. courts found Apple's anti-steering rules unlawful under California's own Unfair Competition Law. The FTC's active case against Amazon alleges the systematic use of third-party seller data to launch competing private-label products — directly harming the independent businesses that sustain the marketplace. The EU's highest court upheld a €2.42 billion fine against Google for exempting its own shopping results from quality filters applied to rivals. These are not edge cases. They represent documented patterns of conduct that disadvantage innovative competitors and harm the businesses that depend on open, fair platform access.
>
> Existing California antitrust law — the Cartwright Act and the Unfair Practices Act — does not expressly address the unilateral self-preferencing conduct of dominant platforms acting as essential intermediaries. SB 1074 fills that gap, consistent with California's tradition of providing broader competitive protections than federal law.

9. Arguments in opposition

According to a coalition of the bill's opponents, including the California Chamber of Commerce and TechNet:

> To comply with the bill's prohibitions and avoid liability, covered platforms will be under a mandate to cooperate with their rivals. That, in turn, will necessitate continuing and detailed collaboration, effectively forcing covered platforms to interact and negotiate terms of cooperation and dealing that, absent SB 1074, involve the kind of conduct that could otherwise raise collusion concerns under other provisions of the Cartwright Act.
>
> Rather than competing, rivals will weaponize the bill's provisions to make wide-ranging demands of covered platforms. Given the very low pleading and evidentiary burdens imposed on plaintiffs under the bill, even weak claims of violation will give rise to the risk of coerced settlements. Settling private suits (threatened or commenced) by rivals would be especially difficult, because it would require agreements on terms of dealing including prices, access, and duration of cooperation that are not specified by the bill. Different rivals might negotiate different terms that favor some, but disfavor others. Government enforcers, and courts, may have to scrutinize those settlements leading to additional litigation over the settlements themselves. And contrary to the goals of the bill, it is more likely to entrench than foster entry and competition among platforms that might otherwise have an incentive to offer the kind of alternative business models the bill tries to force through legislative fiat.

According to Google:

> It's widely recognized that Europe's regulatory attempts to spur competition in the tech sector have failed — Europe still has only 4 of the world's top 50 tech companies. In contrast, California is home to 32 of the world's top 50 AI companies, and has no reason to repeat the mistakes of Europe's unsuccessful DMA experiment.
>
> In *The Future of European Competitiveness*, former Italian Prime Minister and European Central Bank President Mario Draghi described how European productivity has fallen behind, and its need to "profoundly refocus its collective efforts on closing the innovation gap with the US and China, especially in advanced technologies. " He acknowledged that "Europe is stuck in a static industrial structure with few new companies rising up to disrupt existing industries or develop new growth engines. In fact, there is no EU company with a market capitalisation over EUR 100 billion that has been set up from scratch in the last fifty years, while all six US companies with a valuation above EUR 1 trillion have been created in this period."

In fact, California can learn from the failure of the DMA, which has delayed product launches, stifled innovation, and harmed consumers by mandating the removal of product features valued by European businesses and citizens.

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Silicon Valley Leadership Group
TechNet
Yuba-Sutter Chamber of Commerce
Two individuals

RELATED LEGISLATION

Pending legislation:

AB 1776 (Aguiar-Curry, 2026) prohibit one or more persons from acting, causing, taking, or directing measures, actions, or events that are to monopolize or monopsonize in any part of trade or commerce, as specified, or in restraint of trade, as defined. This bill is discussed further in Comment 4 of this analysis. AB 1776 is pending before the Assembly Appropriations Committee.

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 on the Assembly Floor, having failed passage and being granted reconsideration.

Prior legislation:

AB 1345 (Bauer-Kahan, 2025) would have made it unlawful, under the Cartwright Act, for a person to take actions in restraint of trade or attempt to restrain the free exercise of competition or production, or to create or maintain a monopoly or monopsony in any part of trade or commerce. AB 1345 died in the Assembly Judiciary Committee.

AB 325 (Aguiar-Curry, Ch. 338, Stats. 2025) clarified that using a common pricing algorithm to further a price-fixing conspiracy violates the Cartwright Act, and clarified the Cartwright Act's pleading standard.

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