THIRD READING

Bill No: AB 325
Author: Aguiar-Curry (D), et al.
Amended: 8/29/25 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-2, 7/1/25
AYES: Umberg, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Wahab,
   Weber Pierson, Wiener
NOES: Niello, Valladares

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/29/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 54-17, 6/2/25 - See last page for vote

SUBJECT: Cartwright Act: violations

SOURCE: American Economic Liberties Project
               Economic Security California Action
               TechEquity Action

DIGEST: This bill clarifies that using a common pricing algorithm to further a
price-fixing conspiracy violates the Cartwright Act, and clarifies the Cartwright
Act's pleading standard.

ANALYSIS:

Existing federal law:

1) Establishes the Sherman Antitrust Act of 1890 (Sherman Act). (15 United
    States Code (U.S.C.) §§ 1-7.)

2) Makes illegal, under the Sherman Act, every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the states or with foreign nations. (15 U.S.C. § 1.)

3) Authorizes a state attorney general to bring a civil action in the name of the state in any district court of the United States having jurisdiction over the defendant to secure monetary relief, as provided, for violations of the Sherman Act. (15 U.S.C. § 15c.)

Existing state law:

1) Establishes the Cartwright Act. (Business and Professions Code (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, for the purpose of specified restraints of trade.

   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.

8) Authorizes the Attorney General to file a civil action in the name of the people of the State of California, as *parens patriae* on behalf of natural persons residing in the state, for a violation of the Cartwright Act, to secure monetary relief in the form of treble damages sustained by those natural persons, interest, costs, and reasonable attorney fees. (Bus. & Prof. Code, § 16760.)

9) Provides that a violation of the Cartwright Act is a conspiracy against trade, and that knowingly engaging or participating in such a conspiracy is a crime, punishable as follows:

   a) If the violator is a corporation, by a fine of not more than $1 million or the amount under (c), whichever is greater.

   b) If the violator is an individual, by imprisonment pursuant to Penal Code section 1170(h) for one, two, or three years; by imprisonment for up to one year in a county jail; by a fine of not more $250,000 or the amount under (c), whichever is greater; or by both a fine and imprisonment.

   c) If any person derives pecuniary gain from a violation of the Cartwright Act, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than twice the amount of the gain or loss. (Bus. & Prof. Code, § 16755(a).)

10) Provides that all moneys received by a court in payment of any fine or civil penalty imposed pursuant to 9) shall be paid to the State Treasury, if the Attorney General initiated and prosecuted the action; or to the treasurer of the county in which the prosecution is conducted, if the district attorney initiated and prosecuted the action. In an action prosecuted jointly by the Attorney General and a district attorney, the amounts shall be paid in the proportion agreed upon by the prosecuting entities. (Bus. & Prof. Code, § 16755(c).)

11) Provides that, in any indictment, information, or complaint for any offense under the Cartwright Act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with, or in pursuance of it, or aided and assisted in carrying out its purposes, without giving its name or description, or how, when, and where it was created. (Bus. & Prof. Code, § 16756.)

This bill:

1) Adds a new section to the Cartwright Act, set forth in 2)-5), below.

2) Defines the following terms:

   a) "Antitrust laws" means the provisions of Part 2 of Division 7 of the Business and Professions Code.

   b) "Commercial term" includes, without limitation, any of (1) level of service, (2) availability, or (3) output, including quantities of products produced or distributed or the amount or level of service provided.

   c) "Common pricing algorithm" means any methodology, including a computer, software, or other technology, used by two or more persons, that uses computer data to recommend, align, stabilize, set, or otherwise influence a price or commercial term.

   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 Business and Professions Code section 16702 and does not include the end consumer of a product or service.

   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.

3) Provides that it shall be unlawful for a person to use or distribute a common pricing algorithm as part of a contract, combination in the form of a trust, or conspiracy to restrain trade or commerce.

4) Provides that it shall be unlawful for a person to use or distribute a common pricing algorithm if either of the following occurs:

   a) The person distributes the common pricing algorithm to two or more persons with the intent that it be used to set or recommend prices or commercial terms of the same or similar products or services and the person coerces any person to set or adopt a recommended price or commercial term of the same or similar products or services in the jurisdiction of this state.

   b) The person uses the common pricing algorithm to set or recommend prices or commercial terms of products or services and either (1) knows or should know that they are adhering to, or participating in, a scheme to fix the price or commercial term of the same or similar product or service in the jurisdiction of this state, or (2) coerces any person to set or adopt a recommended price or commercial term for the same or similar products or services in the jurisdiction of this state.

5) Provides that nothing in 2)-4) shall impair or limit the applicability of antitrust laws.

6) Provides that, notwithstanding any other law, in a complaint for any violation of the Cartwright Act, it is sufficient to contain factual allegations demonstrating that the existence of a contract, combination in the form of a trust, or conspiracy to restrain trade, and the complaint shall not be required to allege facts tending to exclude the possibility of independent action.

Comments

California's primary antitrust law, the Cartwright Act, prohibits businesses from restraining trade, fixing prices, and reducing competition. The Cartwright Act was enacted in 1907 and has remained in substantially the same form ever since. In the same timeframe, we have moved from a largely pre-electric society to one where most people own a tiny combination computer-telephone-camera-alarm clock-calculator-television-dictionary-etc. that they can keep in their pockets.

The fast pace of technological advancements has been a boon to licit and illicit actors alike. Developments in the online space—such as artificial intelligence, algorithms, and distributed ledger—make it easier for bad actors to hide their tracks, or to bury illegitimate activities under layers of supposedly neutral computer processes. In the past several years, there have been numerous allegations that businesses have used algorithms and AI to do what groups of

humans are prohibited from doing, including engaging in hiring discrimination, violate copyrights, and—relevant to this bill—fix prices.

This bill is intended to provide clarity in the Cartwright Act's application to "algorithmic collusion," through which persons manipulate market forces through the use of a shared pricing algorithm. First, this bill provides that it is unlawful for a person to use or distribute a common pricing algorithm as part of a contract, combination in the form of a trust, or conspiracy to restrain grade or commerce in violation of the Cartwright Act. Second, this bill provides that it is unlawful for a person to use or distribute a pricing algorithm if the person coerces another person to set or adopt a recommended price or commercial term for the same or similar products or services in the jurisdiction of this state. This bill also clarifies the pleading standard for a Cartwright Act claim.

FISCAL EFFECT: Appropriation: No   Fiscal Com.:   Yes   Local: Yes

According to the Senate Appropriations Committee, the fiscal impact is as follows:

- Department of Justice (DOJ) reports no fiscal impact. The department notes to staff that, while the impact of this bill would not pose a significant impact to the DOJ, as numerous bills this session may result in no significant impact to the DOJ, should an aggregate of these bills chapter, the DOJ would submit a workload BCP for additional resources to process the increase to the DOJ workload. Actual costs will depend on whether the Attorney General pursues enforcement actions, and, if so, the level of additional staffing DOJ needs to handle the related workload. If DOJ does not pursue enforcement as authorized by this bill, the department would likely not incur any costs.

- Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate civil actions and criminal charges. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately $10,500 in staff in workload. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

- Unknown, potentially significant costs (local funds) to the counties to incarcerate people for the crimes created by this bill. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from

$70,000 to $90,000 per year. For example, in 2021, Los Angeles County budgeted $1.3 billion for jail spending, including $89,580 per incarcerated person. Actual incarceration costs to counties will depend on the number of convictions and the length of each sentence. Generally, county incarceration costs are not reimbursable state mandates pursuant to Proposition 30 (2012).

- Unknown, potentially significant costs (General Fund) to the Department of Corrections and Rehabilitation (CDCR) to incarcerate people for the crimes created by this bill. The Legislative Analyst's Office (LAO) estimates the average annual cost to incarcerate one person in state prison is $133,000. The annual cost of operating a mental health crisis bed at CDCR is around $400,000. As part of the ongoing Coleman court case, CDCR has been incurring fines monthly since April 2023 for failing to reduce vacancy rates for five mental health classifications. The state has paid over $200 million in fines to date, and is still accruing fines. Thus, if even if just one person is sentenced to state prison for one year under this bill, it will add significant costs pressures to CDCR.

SUPPORT: (Verified 8/25/29)

American Economic Liberties Project (co-source)
Economic Security California Action (co-source)
TechEquity Action (co-source)
AIDS Healthcare Foundation
Americans for Financial Reform
Attorney General Rob Bonta
California Federation of Labor Unions
California Low-Income Consumer Coalition
California Nurses Association
California Public Banking Alliance
California School Employees Association, AFL-CIO
CAMEO Network
Center on Policy Initiatives
Consumer Federation of California
Contra Costa Senior Legal Services
Courage California
Democratic Policy Network
East Bay YIMBY
Economic Security California Action
Ella Baker Center for Human Rights
End Poverty in California

Equal Rights Advocates
Fair Housing Advocates of Northern California
Grow the Richmond
Institute for Local Self-Reliance
Kapor Center
Mountain View YIMBY
Napa Housing Coalition
Napa-Solano for Everyone
National Consumer Law Center
Northern Neighbors
Oakland Privacy
Omidyar Network
Peninsula for Everyone
PowerSwitch Action
Progressive Women of Napa Valley
San Francisco YIMBY
Santa Cruz YIMBY
Santa Monica Democratic Club
Santa Rosa YIMBY
SEIU California
SLOCo YIMBY
Small Business Majority
South Bay YIMBY
Tech Oversight California
UDAW/AFSCME Local 3930
UFCW Western States Council
United Latino Voices of Contra Costa County
Ventura County YIMBY
Warehouse Worker Resource Center
Western Center on Law and Poverty
YIMBY Action
YIMBY Los Angeles

OPPOSITION: (Verified 8/29/25)

American Property Casualty Insurance Association
CalBroadband
California Association of Realtors
California Business Properties Association
California Business Roundtable
California Chamber of Commerce

California Fuels + Convenience Alliance
California Hospital Association
California Hotel & Lodging Association
California Restaurant 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

ARGUMENTS IN SUPPORT: According to Attorney General Rob Bonta:

California's Cartwright Act prohibits agreements between corporations to restrain trade, limit production, and fix prices or otherwise prevent competition. Modern digital tools like pricing algorithms can make it easier for bad actors to artificially inflate prices, restrict supply, and undermine fair market competition. To be clear, price fixing is illegal under existing law, but AB 325 simply makes it clear that using common pricing algorithms to fix prices among competitors is just as illegal as traditional price fixing methods under the Act. The bill also makes it unlawful for a person to use or distribute a common pricing algorithm if the person coerces another person to set or adopt a recommended price or commercial term for the same or similar products or services in the jurisdiction of this state.

In addition, AB 325 reforms pleading standards under California law. Under federal law, particularly after the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, plaintiffs must allege facts that rule out independent conduct and show a "meeting of the minds"—a high burden that often leads to early dismissal, especially in algorithmic collusion cases brought by private plaintiffs.

AB 325 rejects that heightened standard and clarifies that under California law, a plaintiff need only allege plausible facts showing a contract, combination, or conspiracy in restraint of trade. In other words, courts may not require allegations that exclude the possibility of independent parallel conduct. This bill makes it easier for legitimate claims to survive a motion to dismiss and reach discovery, where private plaintiffs can obtain further evidence.

ARGUMENTS IN OPPOSITION: According to a coalition of this bill's opponents:

AB 325 remains as serious a concern, in part because there are other related bills that would address the liability components of these issues, and existing law imposes significant liability on the misuse of pricing algorithms as well. When combined with the bill's broad and vague standards, AB 325's would invariably have a chilling effect on the use of such technologies among businesses, particularly smaller ones who rely more heavily on these technologies to be more competitive with larger businesses that have access to far more data.

We are particularly concerned by the bill's use of the word "coerces'. Coercion is not an antitrust concept and we are unaware of any case, investigation or allegation of an algorithm developer forcing or coercing others to accept pricing recommendations based on an algorithm. In addition, the language of Section (b) is vague because it does not connect coercion with a common pricing algorithm.

We continue to believe that the definition of a "common pricing algorithm" is too broad. The way the definition is currently written, it would apply to completely distinct algorithms - and other types of pricing software - if they are trained on the same or similar data. Any algorithm designed to recommend prices will be trained on the same or similar data as any other pricing algorithm, such as historic pricing and supply and demand information, meaning virtually any algorithm will be covered by the definition, even if designed independently and even if it makes pricing recommendations that are different from other algorithms.

ASSEMBLY FLOOR: 54-17, 6/2/25
AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Quirk-Silva, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas
NOES: Alanis, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis
NO VOTE RECORDED: Ahrens, Bains, Flora, Lackey, Petrie-Norris, Ramos, Blanca Rubio, Solache

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
9/2/25 17:53:09

**** END ****