

SENATE PRIVACY, DIGITAL TECHNOLOGIES, AND CONSUMER PROTECTION COMMITTEE
Senator Christopher Cabaldon, Chair
2025-2026 Regular Session

SB 1074 (Wiener)
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SUBJECT

Covered provider: goods and services: self-preferencing conduct

DIGEST

This bill prohibits “covered providers” from engaging in “self-preferencing conduct” and restricting the independence or interoperability of business users and consumers on the providers’ platforms.

EXECUTIVE SUMMARY

The Cartwright Act is California’s principal antitrust statute. It prohibits price fixing, bid rigging, output restrictions, and other anticompetitive conduct, and authorizes both public and private enforcement. Unlike the federal Sherman Antitrust Act, the Cartwright Act does not prohibit conduct by a single company in restraint of trade, which generally occurs when one corporation has monopolistic market power and can impose anticompetitive measures on the market and on consumers.

Concerns have been raised that existing law does not adequately address unilateral self-preferencing conduct by the largest of platforms. Proponents of this bill argue that the largest tech companies have built models that suppress competition through this conduct by, among other things, prioritizing their own products and services, limiting interoperability, and utilizing information gained from businesses operating on their platform to leverage against them. This bill defines and prohibits “self-preferencing” conduct and prohibits restrictions on the independence or interoperability of businesses and users on their platforms. This applies to platforms with a market capitalization or private valuation of \$1 trillion or more and at least 100 million monthly active users.

The bill is sponsored by Economic Security Action California and Y Combinator. It is supported by numerous labor, consumer, and advocacy groups, as well as many private companies. The bill is opposed by Google and various industry associations. The bill passed out of the Senate Judiciary Committee on an 8 to 1 vote.

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 §§ 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.

- 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 from 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. Antitrust laws

Enacted in 1907, the Cartwright Act is California's principal antitrust statute. It prohibits combinations, agreements, and conspiracies that restrain trade, including price fixing, bid rigging, output restrictions, and market allocation. The Cartwright Act provides criminal and civil enforcement mechanisms, permitting the Attorney General or a district attorney to seek fines and jail time for criminal violations, and treble damages in a suit brought on behalf of the people of California or the county in which the district attorney is located. 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, is authorized to file a civil action to recover treble damages, interest, and injunctive relief.

The Sherman Act is complementary to, and does not preempt, state antitrust laws such as the Cartwright Act. The Sherman Act and the Cartwright Act "have in common the goal of prohibiting trade-restraining combinations and monopolies and thereby preserving competition." However, unlike the federal Sherman Antitrust Act, the Cartwright Act does not prohibit conduct by a single company in restraint of trade, which generally occurs when one corporation has monopolistic market power and can impose anticompetitive measures on the market and on consumers. The Cartwright Act thus generally does not provide a remedy against corporations which harm competition or consumers through monopolistic or self-preferencing conduct.

2. Market dominance by tech titans

In 2019, the House Judiciary Committee, through the Subcommittee on Antitrust, Commercial, and Administrative Law, conducted an investigation into the state of competition online. They focused on the market dominance of four companies, Amazon, Apple, Facebook, and Google. The report found:

Although these four corporations differ in important ways, studying their business practices has revealed common problems. First, each platform now serves as a gatekeeper over a key channel of distribution. By controlling access to markets, these giants can pick winners and losers throughout our economy. They not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them. Second, each platform uses its gatekeeper position to maintain its market power. By controlling the infrastructure of the digital age, they have surveilled other businesses to identify potential rivals, and have ultimately bought out, copied, or cut off their competitive threats. And, finally, these firms have abused their role as intermediaries

to further entrench and expand their dominance. Whether through self-preferencing, predatory pricing, or exclusionary conduct, the dominant platforms have exploited their power in order to become even more dominant.

To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons. Although these firms have delivered clear benefits to society, the dominance of Amazon, Apple, Facebook, and Google has come at a price. These firms typically run the marketplace while also competing in it – a position that enables them to write one set of rules for others, while they play by another, or to engage in a form of their own private quasi regulation that is unaccountable to anyone but themselves.

The effects of this significant and durable market power are costly. The Subcommittee’s series of hearings produced significant evidence that these firms wield their dominance in ways that erode entrepreneurship, degrade Americans’ privacy online, and undermine the vibrancy of the free and diverse press. The result is less innovation, fewer choices for consumers, and a weakened democracy.¹

Supporters of the bill argue that current law fails to recognize that the structural mechanics of digital platform economies differ fundamentally from traditional markets. The author states the problem with current law:

A handful of gatekeepers valued at over \$1 trillion serve simultaneously as the primary infrastructure of digital commerce and as direct competitors to the businesses operating on that infrastructure. This dual role creates an overwhelming conflict of interest that current law cannot efficiently address.

Because existing law requires exhaustive litigation, taking years to resolve and often yielding inadequate remedies, these gatekeepers act with near impunity, engaging in self-preferencing to parlay dominance from one core market into adjacent markets.

On the latter point, even successful antitrust litigation over the last few decades has failed to address some of the market problems created by these massive platforms. Recently, Google was found to have violated the Sherman Act by illegally

¹ *Investigation of Competition in Digital Markets* (July 2022) Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary of the House of Representatives, <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf>. All internet citations are current as of April 16, 2026.

monopolizing the online search market and the online advertising technology market. But Google has not been required to break up or spin off entities to increase competition. Additionally, a federal district court found that Apple violated California's Unfair Competition Law for anticompetitive practices related to its app store, and then found Apple in contempt of court for violating the court's injunction and continuing to engage in anticompetitive practices.

3. Responding to market imbalance

This bill prohibits "covered providers" from engaging in certain conduct. These are entities that own or control a platform that allows business users or sellers to connect with consumers or other business users in the state and that have an average of at least 100 million active users monthly in the country and that have a market capitalization or private valuation of at least \$1 trillion. This likely limits the bill to only five companies: Google, Amazon, Apple, Meta, and Microsoft.

First, these providers are prohibited from engaging in "self-preferencing conduct." This is defined as a practice by which a covered provider treats its own products, services, lines of business, or content more favorably than those 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.

The bill provides a non-exclusive list of examples, including 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.

Second, the bill prohibits providers from restricting the independence or interoperability of business users and consumers on the platform. Again, a nonexclusive list of examples is provided. This includes 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; restricting a business user or consumer from obtaining a copy of their data in a useful and portable format; 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 latter example 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 from the commercial interests of the covered platform.

The bill clarifies that it does not prohibit displaying objective information susceptible to a singular results, such as current time or mathematical calculations, except as provided.

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. Specifically, 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*. 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.

While the bill does not require a showing of competitive harm to make violations actionable, it does provide an affirmative defense to covered providers. To take advantage of this defense, a provider must establish that the conduct was narrowly tailored, nonpretextual, and reasonably necessary to achieve a procompetitive purpose. They must also prove that the procompetitive justifications and actual effects of the conduct clearly outweigh the competitive harms in the same market.

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.

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 that 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, long standing 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.

4. Similar approaches in other jurisdictions

The model used here is similar to the approach taken in the European Union through the Digital Markets Act (DMA):

The Digital Markets Act is the EU's law to make the markets in the digital sector fairer and more contestable. In order to do so, the Digital Markets Act ("DMA") establishes a set of clearly defined objective criteria to identify "gatekeepers".

Gatekeepers are large digital platforms providing so called core platform services, such as online search engines, app stores, messenger services. Gatekeepers will have to comply with the do's (i.e., obligations) and don'ts (i.e., prohibitions) listed in the DMA.

The DMA is one of the first regulatory tools to comprehensively regulate the gatekeeper power of the largest digital companies.²

² About the Digital Markets Act, European Commission, https://digital-markets-act.ec.europa.eu/about-dma_en.

Similar to this bill, there are only a handful of identified “gatekeepers” under the DMA: Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft. A brief list of the requirements and prohibitions under the DMA:

Requirements:

- Allow third parties to inter-operate with the gatekeeper’s own services in certain specific situations.
- Allow their business users to access the data that they generate in their use of the gatekeeper’s platform.
- Provide companies advertising on their platform with the tools and information necessary for advertisers and publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper.
- Allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper’s platform.

Prohibitions:

- Treat services and products offered by the gatekeeper itself more favorably in ranking than similar services or products offered by third parties on the gatekeeper's platform.
- Prevent consumers from linking up to businesses outside their platforms.
- Prevent users from un-installing any pre-installed software or app if they wish to.
- Track end users outside of the gatekeepers' core platform service for the purpose of targeted advertising, without effective consent having been granted.

Triggered by the extensive House investigation discussed above, the American Innovation and Choice Online Act (AICOA) was introduced in the United States Congress. Similar to this bill, it prohibited the big 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. However, AICOA included a lower threshold and its enforcement scheme was narrower. It was enforceable only by the Attorney General or Federal Trade Commission. The bill ultimately died on the Senate Floor.

For its part, the California Legislature adopted a resolution in 2022, ACR 95 (Cunningham, Ch. 147, Stats. 2022) that directed the California Law Revision Commission (CLRC) to study whether revisions to the law should be made to address antitrust and market competition concerns. Specifically, it called for the study of the following topics:

- Whether the law should be revised to outlaw monopolies by single companies as outlawed by Section 2 of the Sherman Act, as proposed in New York State’s “Twenty-First Century Anti-Trust Act” and in the “Competition and Antitrust

Law Enforcement Reform Act of 2021” introduced in the United States Senate, or as outlawed in other jurisdictions.

- Whether the law should be revised in the context of technology companies so that analysis of antitrust injury in that setting reflects competitive benefits such as innovation and permitting the personal freedom of individuals to start their own businesses and not solely whether such monopolies act to raise prices.
- Whether the law should be revised in any other fashion, such as 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.

The CLRC concluded:

Based on the foregoing review and analysis, the Commission recommends that California law should include a [“single-firm conduct” (SFC)] provision that is tailored to reflect California’s values and enforcement priorities and is not bound to federal antitrust case law. The Commission concluded that codifying language that establishes the Legislature’s intent in revising California’s antitrust laws and provides guidance for their interpretation would ensure a durable framework for this new body of law. Finally, the Commission found certain federal precedents particularly restrictive, which could limit the effectiveness and enforcement of state law if followed by state or federal courts. Accordingly, it chose to include in statute a nonexclusive list of elements from various federal antitrust law cases that do not need to be proved to establish liability under California antitrust law.³

The CLRC report recommends the addition of three new sections to the Cartwright Act to address harmful SFC, including monopolization and monopsonization conduct, across all industries. AB 1776 (Aguiar-Curry, 2026), which is pending before the Assembly Appropriations Committee, sets forth the CLRC’s recommended language nearly verbatim.

5. Support

Y Combinator, a co-sponsor of the bill, and a vast list of companies write in support:

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

³ Preprint Recommendation, *Antitrust Law: Single Firm Conduct* (March 2026) California Law Revision Commission, <https://clrc.ca.gov/pub/Printed-Reports/Pub249-B750.pdf>.

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.

Economic Security California Action, a co-sponsor of the bill, writes:

SB 1074 establishes a clear list of prohibited anticompetitive conduct for only the largest digital platforms - specifically, those owned by firms with a market capitalization of \$1 trillion or more that serve 100 million or more U.S. monthly users.

Congress has failed to pass legislation to address this anticompetitive conduct. The American Innovation and Choice Online Act ("AICOA"), which addressed self-preferencing, among other things, passed the United States Senate Judiciary Committee with bipartisan support but never received a floor vote. Meanwhile, the conduct has ballooned - and has now expanded into AI-mediated forms, including search summaries, shopping assistants, and recommendation engines that surface the platform's own products without applying the same neutral criteria to third parties.

As the global center of technology innovation, California has a unique obligation to protect and foster competition. Indeed, to maintain its status, the state must act to prevent dominant market players from stifling

innovative competitors. SB 1074 establishes that California will not wait for federal action to protect the consumers, workers, small businesses and start-ups, and all of us who deserve a fair and level tech playing field.

Writing in support, a coalition of consumer, labor, tech policy, and economic justice organizations, including the California Federation of Labor Unions, Small Business Majority, and the Consumer Federation of California make the case for the bill:

A fair economy rests on robust competition, a core American value, and the bedrock of our economy. Anticompetitive conduct by monopolies, trusts, and powerful incumbents, by contrast, has been shown to harm consumers and workers, favor established players over new entrants and innovators, and restrict economic mobility. When dominant firms tilt the playing field to benefit themselves and stifle competition, the economy stops working for consumers, workers, small businesses, and communities. It hampers innovation and chills entrepreneurship.

Self-preferencing, which this bill prohibits, is a well-documented set of anticompetitive practices through which the largest digital platforms systematically favor their own products and services over those of competitors, allowing them to maintain market dominance, suppress competition, disadvantage small businesses, raise prices on consumers and business users, and control how people experience technology in their daily lives.

6. Opposition

A coalition of industry associations, led by the California Chamber of Commerce and including the California Apartment Association and the Personal Insurance Federation of California, writes in opposition:

While SB 1074 is crafted to suggest that the law only prohibits conduct that could disadvantage users or rivals, in fact the provisions impose extensive affirmative obligations that dictate product design choices and force successful platforms to share valuable assets and intellectual property with rivals.

For similar reasons, the House companion bill of AICOA drew pointed and valid criticisms from the California delegation. For example, Representative Zoe Lofgren observed: “Many platform products, services, and useful integrations would presumptively be ‘unlawful’ ...platforms will bear the burden of disproving...that they did not ‘harm the competitive process’ – a vague standard that would require months or years of litigation before it can ever be won as an affirmative defense.”

(Press Release, June 23, 2001.) Similarly, in an Op-ed published on May 10, 2022, Rep. Eric Swalwell stated:

My district lies in the San Francisco Bay Area, where thousands of my constituents make and support the tech applications consumers use day in and day out. These innovations, as well as people's jobs, families and livelihoods, are always top of mind when I review any federal legislation. Likewise, California employs robust privacy, data security, and antitrust laws. I cannot in good conscience support federal antitrust legislation that would weaken those carefully crafted laws...Unfortunately, the antitrust bills being considered in both the House and Senate include antitrust reforms that would have unintended cybersecurity consequences. These issues were recently reinforced by numerous national security experts. (Op-Ed May 10, 2022.)

Senator Alex Padilla also criticized AICOA, expressing his concern that it could "be a gift to bad actors seeking to prevent platforms from blocking business users that peddle hate speech or imagine election disinformation." (Los Angeles Times, Feb. 1, 2022.)

But the BASED Act takes a bad bill and makes it worse. AICOA would have been enforceable only by federal and state public prosecutors. It did not include a private right of action. The BASED Act would allow any person or entity with standing to bring an action under the Cartwright Act to file a claim, including class actions. A defendant would be subject to the same fees and penalties as a Cartwright Act violation, including treble damages, and those remedies would be cumulative on top of any remedies for violations of other California laws.

AICOA also required that a plaintiff alleging a so-called "self-preferencing" violation show material competitive harm to meet their burden. The BASED Act does not require any comparable showing. It creates a presumption that so-called self-preferencing or other vaguely enumerated product design or platform access choices are unlawful. To rebut that presumption, a covered platform would be required to prove that its design and platform access choices were "reasonably necessary" to achieve a procompetitive purpose and that the procompetitive justifications and actual effects clearly outweigh the competitive harm in the same market. The presumption that design and platform access choices are unlawful, with the high bar for an affirmative defense, would make it difficult for a covered platform to prevail on even common-sense grounds that were expressly allowed in the AICOA, such as compliance with state or federal law, or protection of user privacy and data security.

This is especially true due to the requirement of harm and benefit occurring “in the same market,” as a restriction on business users may be necessary to protect consumers, but these could be seen as different markets.

SB 1074 would also serve as a disincentive for companies to continue to try to grow their workforce and economic activity. If a company was coming close to the arbitrary thresholds outlined in the bill, it may stop competing and innovating as vigorously, so as to not be subject to the complex web of compliance and legal liability that the bill would require.

Writing in opposition, Google argues the bill would hurt small businesses:

Free and low-cost services benefit California’s more than four million small businesses and their more than seven million employees. SB 1074 would cause small businesses to lose valuable free traffic to their businesses and encounter more friction and expense in using the tools they use to run their businesses. SB 1074 could:

- Bring to California the DMA’s hit to European innovation and delayed or blocked introduction of new products and services.
- Make digital marketing and advertising less effective and more expensive, forcing small businesses to pay higher commissions to intermediaries.
- End free services that connect small businesses with customers, like Google’s Business Profiles, which rely on product integrations with Maps and Search. (The DMA has reduced business visibility and sales by cutting off free traffic generated by these kinds of Google services.)
- Require platforms to disaggregate integrated productivity tools like email, word processing, video conferencing, and calendars that small businesses rely on for day-to-day operations, making those tools harder and more time-consuming to use. And previously free tools may have to introduce new costs to business users.

As Mitchel Volkering, founder of Vaic.at, an AI start-up based in the Netherlands, told ACT / The App Association, for start-ups these delays “directly translate to missed opportunities, slower market entry, and competitive disadvantages to developers operating in non-DMA jurisdictions... By the time features arrive, the moment has often passed... that is real lost revenue for small businesses.” ACT’s EU/UK/US AI survey findings show that such delays can cost small developers between \$109,000 to \$375,000 per year.

SUPPORT

Economic Security Project Action (co-sponsor)

Y Combinator (co-sponsor)

Opass INC.

4see, INC.

851 INC. (EMOJIS.COM)

A1base INC

Abundance Network

Access Fund

Accessgrid

Agentcard

Agentweb

Ai Recruitment Technologies INC.

Aidy

Airgoods

Alchemy Ai Scientific, INC.

Alixia

Alliance

Altrina

Altstore

American Economic Liberties Project

American Federation of Musicians, Local 7

Andi

Arcimus

Argonaut Hq, INC

Articulate

Ashby

Assembly, INC.

Aster Ai Labs, INC.

Atlia, INC.

Avelis, INC.

Aviary Ai

Axle Health

Ayc Fund

B12, Co.

Batch Ventures

Beeper

Begin Learning

Better Tomorrow Ventures

Bild AI

Bitboard

Blaxel

Blue

Blueshift Labs, INC.
Browse.dev
Burst Capital
Cactus Compute, INC.
California Federation of Labor Unions
California Labor Federation
California Low-income Consumer Coalition
California Safety and Legislative Board, Smart - Transportation Division (smart - Td)
California Teamsters
Cambly
Camelai
Candor Security
Captain
Caretta
Cekura, INC.
Centralcoms
Chronicle Labs
Cinapse
Ciro
Clerky
Coalition for App Fairness
Code Four
Cointracker
Commonweal Ventures
Confluence Labs
Constructable (patera Inc.)
Consumer Federation of California
Consumer Watchdog
Convictional, INC.
Corycat Technologies
Corvera
Courage California
Cradle
Creativemode
Credal AI
Crow
Dart
Datafruit
Datost
Deed
Deep Agents
Devyce INC.
Digipals
Disconnect

Duckduckgo

Durate

Elevation Partners

Ello

End Poverty in California (EPIC)

Endorsed

Euclid

Everest

Expo

Ezdubs

Failpunk LLC

Fed10

Figuro

Fire Kicks

Fond

Fondo

Forerunner AI

Forum Markets Group INC.

Friskai

Fume Technologies, INC.

Fundamental, INC.

Gale

Gcast

Gemini Therapeutics

Geo Advisor

Giga

Gogograndparent

Goriff

Governngpt

Greptile

Growthsync

Haladir

Harbor

Hazard, INC

Hazel

Hedgy Labs

Hive

Humwork

Hyper

Incandor

Incidentfox

Infisical

Inkhunter

Instinct Space

Institute for Local Self-reliance
Interaction Co.
Inventoryquant
Inversion Semiconductor INC.
Ishiki Labs
Iwp Health INC.
Joxy.ai
Julep AI INC.
Junction Bioscience
Kapor Center Advocacy
Keylika
Keywords Ai INC.
Kindred
Kinect
Ledgerup
Lemonslice
Lexius
Like.fm, INC.
Lilac Research INC.
Limrun, INC.
Lingo.dev
Linzumi
Lodg
Loombotic
Lucidic AI, INC.
Luthor.AI
Magentiq
Make Sunsets
Malloc INC
Marr Labs Technologies, INC
Matforge.AI
Meadow
Mentra
Meter Feeder
Mica AI
Mindbase
Miyagi Labs
Mount
Movedot AI
Mozilla
Multifactor
Mux
Narrative
Novoflow

Nprompt INC.

Numeral

O11

Oakland Privacy

Octapulse

Odo

Offbeast

Ollie

One Lab

Ontra Mobility

Opalite Health INC.

Orange Collective

Overdrive Health

Paces

Padmapper

Page Turner Labs INC.

Pair Team, Pbc

Pally Technologies, INC.

Palus Finance

Panora

Paradedb

Parsagon

Patika Technology, INC

Pax

Peas in a Pod LLC

Pebble (core Devices Llc)

Pine Park Health

Pocket

Pocket Worlds

Pollinate

Potarix

Primero AI

Prism Technologies INC.

Promoted.ai

Proton

Puzzle Financial

Pylon

Qvin (qurasense Inc.)

Raysurfer

Recheck

Recon Dynamics

Redemption Games

Reflex

Regbase

Rejuvenation Technologies INC
Respell
Responsible Online Commerce Coalition (ROCC)
Ride Home AI Fund
Rimba, INC.
Risely AI
Rocketeer
Roundabout Technologies
Rthm
Saffron
Saldor, INC.
Seeing Systems INC
Sellraze
Semiotic
Sennu AI
Shofo
Shor
Shorebird
Signalfire Vc
Simple AI
Small Business Majority
Smart - Transportation Division
Sourcebot
Sparkles
Spokn
Springtail, INC.
Stagewise INC.
Stardrift
Sterling Road
Strand AI
Sunset
Suprunit
Synapse
Taiki, INC.
Talc AI INC.
Teamsters California
Tech Oversight California
TechEquity Action
Tensorpool
Tenyks INC.
Terminal Use
The Prompting Company
Tig Technologies
Tinfoil

Toothy AI
Tpaga LLC
Traceroot.ai, INC.
Trainy
Twolabs INC.
Ubicloud
Udw/afscme Local 3930
Upcodes
Vaya
Vector Systems Pbc
Velvet
Veryfi
Videogen, INC.
Voquill
Vortexifyai
Warmly
Warpfi
Wasmer
Wasp
Wideframe
With Riviera, INC.
Wonder Monday
Wordware
Xreal Estate INC. (LANDEED)
Yelp
Yutori
Zentail
Zephyr Fusion
Zinc.com
Zoko

OPPOSITION

Bay Area Council
California Apartment Association
California Broadcasters Association
California Business Properties Association
California Chamber of Commerce
California Grocers Association
California Retailers Association
Chamber of Progress
Civil Justice Association of California (CJAC)
Computer & Communications Industry Association
Google

Los Angeles County Business Federation
National Association of Mutual Insurance Companies
Netchoice
Pasadena Chamber of Commerce and Civic Association
Personal Insurance Federation of California
Sillicon Valley Leadership Group
Software and Information Industry Association
Technet

RELATED 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. 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 been granted reconsideration.

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.

ACR 95 (Cunningham, Ch. 147, Stats. 2022) *See* Comment 4.

AB 1790 (Wicks, Ch. 635, Stats. 2019) required the terms and conditions of marketplaces, physical or electronic places where sellers offer services or goods for delivery in California, to meet specified requirements. This bill requires marketplaces to communicate with sellers its decision-making process with respect to various terms and processes.

PRIOR VOTES:

Senate Judiciary Committee (Ayes 8, Noes 1)
