Date of Hearing: July 16, 2025
Fiscal: Yes

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Rebecca Bauer-Kahan, Chair
SB 295 (Hurtado) – As Amended July 14, 2025

**SENATE VOTE**: 29-10

**SUBJECT**: California Preventing Algorithmic Collusion Act of 2025

## SYNOPSIS

*Antitrust laws have been on the books for over a century and have evolved along with the means of reaching unlawful price-fixing agreements. As smoke-filled backrooms and handshakes gave way to the phone, fax, pager, and email, the law has adapted to address new challenges. The new frontier is algorithmic price-fixing, which can attain uncompetitive ends with greater efficiency and scale – and yet is even more difficult to detect, let alone prove in court.*

*While algorithmic collusion appears to be on the rise in certain sectors of the economy, competition in the legislative marketplace of ideas is thriving. Before the Committee today are three overlapping bills – this bill, SB 52 (Pérez), and SB 384 (Wahab) – that, in similar ways, seek to prohibit the distribution and use of algorithmic price-fixing tools that process nonpublic competitor data. Whereas SB 52 focuses specifically on housing, the other two bills apply more broadly: SB 384 applies to goods, services, and rental housing and this bill applies to products, services, and rental property.*

*Specifically, the bill prohibits a person from distributing, or making recommendations based on, a pricing algorithm if the person intends or reasonably expects that two or more competitors will use the pricing algorithm for the same product, rental property, or services, and the person knows or should know the pricing algorithm processes nonpublic competitor data. The bill similarly prohibits the use of a recommendation of such pricing algorithms if the person knows or should know that a competitor used the product, rental property, or service in the same market. Under the bill, public prosecutors may bring a civil action for a violation.*

*This measure is sponsored by the AIDS Healthcare Foundation and supported by The City of Emeryville and the Private Equity Stakeholder Project. It is opposed by an industry coalition led by the Chamber of Commerce, among others.*

*The bill passed the Judiciary Committee on a 9-3 vote.*

**THIS BILL**:

1) Defines, among other terms:

    a) "Commercial term" as level of service, availability, output, rebates or discounts made available, or property rental rate, lease term, or occupancy level.

    b) "Competitor data" as the confidential, nonpublic, competitively sensitive information of two or more competitors in the same market.

c) "Competitors" as two or more businesses that offer a similar product, rental property, or service in the same market to the same customer base.

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

2) Prohibits a person from:

a) Distributing, or making recommendations based on, a pricing algorithm to two or more competitors with the intent or reasonable expectation that the pricing algorithm or the recommendations be used by the competitors to set the price or commercial term of similar products, rental property, or services in the same market if the person knows or should know that the pricing algorithm processes competitor data.

b) Using the recommendation of a pricing algorithm that processes competitor data to set a price or commercial term of a product, rental property, or service if the person knows or should know that the pricing algorithm uses or incorporates competitor data and that the pricing algorithm or recommendation was used by a competitor to set or recommend a price or commercial term of a similar product, rental property, or service in the same market.

3) Provides that it is an affirmative defense to liability if the person demonstrates by a preponderance of evidence that they exercised reasonable due diligence before using the recommendation of a pricing algorithm, including, but not limited to, obtaining written assurances from the person distributing the pricing algorithm, or making recommendations based on the pricing algorithm, that the pricing algorithm does not process competitor data.

4) Provides that, for a person who distributes a pricing algorithm, each authorized user of the pricing algorithm constitutes a separate violation. For a person who makes recommendations based on the use of the pricing algorithm, each instance in which the person makes a recommendation constitutes a separate violation. For a person who uses the recommendation of a pricing algorithm, each calendar month of use constitutes a separate violation.

5) Does not apply if all of the competitor data processed by the pricing algorithm was collected more than one year before the use, recommendation, or distribution of the pricing algorithm.

6) Provides that public prosecutors may bring a civil action for a violation seeking restitution, punitive damages, and a civil penalty of up to $25,000, depending on specified factors a court must consider.

7) Provides that a contract that violates a provision of the bill is to that extent void and that the bill does not limit applicability of antitrust laws.

**EXISTING LAW**:

1) Under the federal Sherman Antitrust Act of 1890, prohibits any contract, combination in the form of trust or otherwise, or conspiracy, that unreasonably restrains trade. (15 U.S.C. § 1.)

Prohibits monopolizing or attempting to monopolize, or conspiring to monopolize, trade or commerce. (15 U.S.C. § 2.)

2) Under California's Cartwright Act, makes every "trust" unlawful, against public policy, and void. (Bus. & Prof. Code § 16726.) Defines a "trust" as a combination of capital, skill or acts by two or more persons in order to do any of the following:

    a. Create or carry out restrictions in trade or commerce.

    b. Limit or reduce the production, or increase the price of merchandise or of any commodity.

    c. Prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

    d. Fix at any standard or figure, whereby its price to the public or consumer is in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in California.

    e. 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 or any combination of any 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.

    iv) 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 might in any manner be affected. (Bus. & Prof. Code § 16720.)

3) Provides that the Attorney General and county district attorneys may bring criminal or civil actions to enforce the Cartwright Act. Corporations are subject to fines of up to $1 million; individuals are subject to fines of up to $250,000 and imprisonment for three years. (Bus. & Prof. Code § 16755.)

4) Grants a private right of action in which plaintiffs may recover treble damages, injunctive relief, costs, attorney's fees, and interest on actual damages. (Bus. & Prof. Code §§ 16750, 16761.)

**COMMENTS**:

1) **Author's statement**. According to the author:

> Technology is advancing faster than our laws, and SB 295, the California Preventing Algorithmic Collusion Act of 2025, ensures AI isn't used to manipulate markets and exploit consumers.
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> Traditionally, price-fixing required secret meetings between competitors. Today, algorithms do the colluding analyzing competitor data, predicting behavior, and adjusting prices in near real-time. This creates a new form of price-fixing that's harder to detect but just as harmful.
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> The impact is real. Grocery prices have soared as a few corporations dominate the market. Rent prices are artificially inflated by algorithmic tools coordinating hikes among landlords. Online and travel industries use AI-driven pricing to squeeze consumers. Without action, these trends will only worsen. SB 295 stops AI-driven collusion before it becomes the norm. It bans pricing algorithms from using competitor data to fix prices, mandates transparency from companies using these tools, and gives the Attorney General the power to enforce violations.
>
> California has led in innovation and consumer protection and we must continue to lead. Unchecked AI pricing will erode competition, drive up costs, and harm consumers.

2) **Antitrust laws.** Two closely related antitrust laws – the federal Sherman Act and the state's Cartwright Act – are implicated in any form of price-fixing.

*Sherman Act.* Section 1 of the federal Sherman Act prohibits concerted action that restrains trade, while Section 2 covers concerted action and independent action, but "only when it threatens actual monopolization," a higher bar than restraint of trade.[1] According to the United States Supreme Court:

> The reason Congress treated concerted behavior more strictly than unilateral behavior is readily appreciated. Concerted activity inherently is fraught with anticompetitive risk. It deprives the marketplace of the independent centers of decisionmaking that competition assumes and demands. In any conspiracy, two or more entities that previously pursued their own interests separately are combining to act as one for their common benefit. This not only reduces the diverse directions in which economic power is aimed but suddenly increases the economic power moving in one particular direction. Of course, such mergings of resources may well lead to efficiencies that benefit consumers, but their anticompetitive potential is sufficient to warrant scrutiny even in the absence of incipient monopoly.[2]

"The relevant inquiry" under section 1 "is whether there is a 'contract, combination . . . , or conspiracy' amongst 'separate economic actors pursuing separate economic interests, such that the agreement 'deprives the marketplace of independent centers of decisionmaking,' and therefore of 'diversity of entrepreneurial interests,' and thus of actual or potential competition."[3] In other words, "The 'crucial question' prompting Section 1 liability is 'whether the challenged anticompetitive conduct 'stems from [lawful] independent decision or from an agreement, tacit or express.'"[4]

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[1] *Copperweld Corp. v. Independence Tube Corp*. (1984) 467 U.S. 752, 767.
[2] *Id.* at pp. 768-769.
[3] *Am. Needle, Inc. v. NFL* (2010) 560 U.S. 183, 195, citations omitted.
[4] *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.* (9th Cir. 2022) 28 F.4th 42, 46, quoting *Bell Atl. Corp. v. Twombly* (2007) 550 U.S. 544, 553.

*Cartwright Act.* "[B]roader in range and deeper in reach"[5] than its federal counterpart, California's Cartwright Act (Act) "'generally outlaws any combinations or agreements which restrain trade or competition or which fix or control prices.'"[6] The Act is "premised on the notion that competition yields efficient resource allocation, lower prices, higher quality, and greater social welfare."[7] "'At its heart is a prohibition against agreements that prevent the growth of healthy, competitive markets for goods and services and the establishment of prices through market forces.'"[8] "The [A]ct's principal goal is the preservation of consumer welfare."[9]

Under the Act, a violation requires "a combination of capital, skill or acts by two or more persons" that seeks to achieve an anticompetitive end.[10] A complaint pursuant to the Act must allege: "(1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts."[11]

*Concerted action.* "Two forms of conspiracy may be used to establish a violation of antitrust laws: a *horizontal* restraint, consisting of a collaboration among competitors; or a *vertical* restraint, based upon an agreement between business entities occupying different levels of the marketing chain."[12] A hybrid of horizontal and vertical agreements is sometimes referred to as a "hub-and-spoke" conspiracy, in which a central actor, or hub, enters into vertical agreements with spokes, such as competing manufacturers or distributors. If the spokes have horizontal agreements with each other, the conspiracy is "rimmed", whereas if they do not, it is a "rimless" hub-and-spoke.

Certain types of agreements that restrain trade are illegal *per se* because they almost always undermine competition, while others are subject to a "rule of reason" review, which requires the plaintiff to show that the agreement harms competition more than it helps.[13] Most horizontal agreements are *per se* violations,[14] whereas vertical agreements are usually analyzed under the rule of reason.[15] Price fixing, however, is *per se* illegal regardless of whether it occurs between competitors or businesses at different economic levels.[16]

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[5] In re *Cipro Cases I & II* (2015) 61 Cal.4th 116, 160-161. However, the Cartwright Act does not prohibit unilateral conduct.
[6] *Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143, 1147.
[7] *Ahn v. Stewart Title Guaranty Co*. (2023) 93 Cal.App.5th 168, 179.
[8] *Ibid.*
[9] *In re Cipro Cases I & II, supra*, 61 Cal. 4th at p. 136.
[10] Bus. & Prof. Code § 16720.
[11] *Smith v. State Farm Mut. Auto. Ins. Co.* (2001) 93 Cal. App. 4th 700, 722; *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1, 8; *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC* (9th Cir. 2022) 31 F.4th 651, 665, fn. 8.
[12] *G.H.I.I. v. MTS, Inc*. (1983) 147 Cal.App.3d 256, 267, emphasis in original.
[13] *People v. Bldg. Maint. Contractors' Ass'n* (1957) 41 Cal. 2d 719, 727.
[14] *See Knevelbaard Dairies v. Kraft Foods, Inc.* (9th Cir. 1979) 232 F.3d 979, 986.
[15] *In re Musical Instruments & Equip. Antitrust Litig*. (9th Cir. 2015) 798 F.3d 1186 n.3; *United States v. Joyce* (9th Cir. 2018) 895 F.3d 673, 677.
[16] *Mailand v. Burckle* (1978) 20 Cal.3d 367, 377.

On the other hand, merely exchanging information, including about prices, is not itself illegal unless it is part of an express or tacit agreement to fix prices.[17] Agreements "may be inferred on the basis of conscious parallelism, when such interdependent conduct is accompanied by circumstantial evidence and plus factors."[18] Plus factors can include "a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of interfirm communications."[19]

3) **Price-fixing algorithms.** Pricing algorithms are commonly used to help set prices that are responsive to market conditions, which may increase market efficiency in competitive markets. However, they can also facilitate price-fixing, thereby decreasing market efficiency and hampering competition.

Algorithmic collusion is not new. In 1992, the United States Department of Justice (DOJ) filed suit against eight of the nation's largest airlines in connection with an algorithmic pricing system, known as the Airline Tariff Publishing Company (ATP), which was used to increase the cost of airplane tickets by potentially upwards of a billion dollars during a four-year period. "By supplying or withdrawing changes in fares, the airlines told each other what fares they wanted to charge in which markets, what competitors' fares were acceptable to them, and what deals they were willing to make." [20] The attorney in charge of DOJ's Antitrust Division stated, 'The airlines used the ATP fare dissemination system to carry on conversations just as direct and detailed as those traditionally conducted, by conspirators over the telephone or in hotel rooms. Although their method was novel, their conduct amounted to price fixing, plain and simple.' Two of the airlines entered a consent decree and the other six entered into a settlement with the DOJ.[21]

The rise of machine-learning pricing algorithms has intensified concerns about anti-competitive behavior, particularly tacit collusion.[22] Unlike older rule-based systems, modern algorithms can rapidly assimilate market data, predict demand fluctuations, and adjust prices based on competitor behavior, often reinforcing strategies that maximize profits in an anticompetitive fashion.[23] In particular, models that use reinforcement learning – a training process that uses rewards and punishments to orient a model's behavior towards attaining a specific goal[24] – and real-time data feedback loops can adapt to function in a manner that sustains high prices, effectively facilitating tacit collusion without explicit human agreement.[25] Moreover, algorithms'

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[17] *Aguilar v. Atl. Richfield Co.* (2001) 25 Cal. 4th 826, 862-863 ("'Competition does not become less free merely because the conduct of commercial operations becomes more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction'").
[18] *In re Automobile Antitrust Cases I & II* (2015) 1 Cal.App.5th 127, 169, citations and nested quotation marks omitted.
[19] *Ibid.*
[20] "Justice Department Settles Airlines Price Fixing Suit, May Save Consumers Hundreds of Millions of Dollars" (1994), https://www.justice.gov/archive/atr/public/press_releases/1994/211786.htm.
[21] *Ibid.*
[22] Clark et al, "Pricing Algorithms as Third-Party Facillitators of Collusion" *American Bar Association* (Dec. 2024), p. 3, https://www.americanbar.org/content/dam/aba/publications/antitrust/source/2024/december/pricing-algorithms-third-party-facilitators-collusion.pdf.
[23] *Ibid.*
[24] Mummert et al., "What is reinforcement learning?" *IBM Developer* (September 15, 2022), developer.ibm.com/learningpaths/get-started-automated-ai-for-decision-making-api/what-is-automated-ai-for-decision-making.
[25] "Pricing Algorithms as Third-Party Facillitators of Collusion," *supra*, pp. 3-5.

faster response times and improved demand predictions may help firms sustain collusive pricing structures by swiftly detecting and punishing deviations, leading to supra-competitive prices.[26]

With respect to the impact of pricing algorithms in the housing context, in 2024 the White House issued a report concluding as follows: "We find that anticompetitive pricing costs renters in algorithm-utilizing buildings an average of $70 a month. In total, we estimate the costs to renters in 2023 was $3.8 billion. This estimate is likely a lower bound on the true costs."[27]

4) **AI collusion cases**. A number of pending federal cases allege that the use of a common pricing algorithms violates the Sherman Act. Some key examples follow.

*RealPage.* In October of 2022, ProPublica published an investigation of RealPage's rental housing pricing algorithm. This popular software, used by many of the largest property managers who control thousands of apartments in metropolitan areas throughout the country, collects information from the property managers, including private lease transactions and occupancy data, that is then fed into a common algorithm that recommends optimal rental rates.[28] This led to numerous class-action lawsuits against RealPage, as well as a lawsuit by Attorney General Rob Bonta, along with the DOJ and eight other attorneys general. The litigation is ongoing.[29]

In a filing with the court, the DOJ set forth its view that "[a]s with other actions taken in concert, competitors' joint use of common algorithms can remove independent decision making. . . . Put another way, whether firms effectuate a price-fixing scheme through a software algorithm or through human-to-human interaction should be of no legal significance. Automating an anticompetitive scheme does not make it less anticompetitive." The DOJ continued:

> The question in this case is whether the defendants have violated Section 1 of the Sherman Act by allegedly *knowingly combining their sensitive, nonpublic pricing and supply information in an algorithm that they rely upon in making pricing decisions, with the knowledge and expectation that other competitors will do the same*. Although not every use of an algorithm to set price qualifies as a per se violation of Section 1, taking the allegations set forth in the complaints as true, the alleged scheme meets the legal criteria for per se unlawful price fixing.[30]

*RENTmaximizer.* Another pending case similarly involves allegations that competing landlords violated section 1 of the Sherman Act by, among other things, unlawfully agreeing to use a centralized pricing algorithm to artificially inflate multifamily rental prices.[31] The DOJ argued that "competitors' jointly delegating key aspects of their decisionmaking to a common algorithm" amounts to *per se* concerted action "because doing so 'joins together separate decisionmakers' and thus 'deprives the marketplace of independent centers of

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[26] *Ibid.*
[27] White House, *The Cost of Anticompetitive Pricing Algorithms in Rental Housing* (Dec. 17, 2024), https://bidenwhitehouse.archives.gov/cea/written-materials/2024/12/17/the-cost-of-anticompetitive-pricing-algorithms-in-rental-housing/.
[28] Heath Vogell, "Rent Going Up? One Company's Algorithm Could Be Why," *ProPublica* (Oct. 15, 2022), https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent.
[29] *See In re RealPage, Inc., Rental Software Antitrust Litig*. (No. II) (M.D.Tenn. 2023) 709 F. Supp. 3d 478, 492.
[30] Memorandum of Law in Support of Statement of Interest of the United States, In re RealPage, Case No. 3:23-MD-3071 (M.D. Tenn Nov. 15, 2023), https://www.justice.gov/d9/2023-11/418053.pdf. (Emphasis added.)
[31] *See Duffy v. Yardi Sys., Inc.* (W.D.Wash. Dec. 5, 2024, No. 2:23-cv-01391-RSL) 2024 U.S.Dist.LEXIS 220641.

decisionmaking.'"[32] Furthermore, "[w]here, as here, plaintiffs' allegations involve a conspiracy to *centralize* pricing decisions in a third-party algorithm, it is irrelevant to the scheme whether landlords share confidential information among themselves or with only the pricing agent; the alleged scheme is designed to obviate the need for competitors to share information directly with each other."[33]

*Cendyn.* A federal district court recently dismissed a class action lawsuit alleging that Las Vegas hotel operators engaged in illegal price-fixing by using Cendyn's revenue management software.[34] The court highlighted that the pricing recommendations were not based on nonpublic, competitively sensitive information; rather, it was public information available from online listings and travel agencies. The court also concluded that the plaintiffs failed to allege that hotel operators "agreed to be bound by [Cendyn's] pricing recommendations, much less that they all agreed to charge the same prices."[35] The decision is on appeal to the Ninth Circuit. The DOJ has argued that "an invitation for collective action followed by conduct showing acceptance" such as "joint use" of the pricing algorithm amounts to concerted action, which may be a *per se* violation if the algorithm sets a "default or starting point price," if the hotel ultimately charges a different price.[36] DOJ also argued that the lower court erred by failing to recognize allegations supporting the conclusion that "Cendyn combines non-public, competitively sensitive information to generate prices."[37]

A similar case involving use of Cendyn's pricing software by Atlantic City hotels was also dismissed. Although the DOJ and the Federal Trade Commission argued usage of pricing algorithms is unlawful even when co-conspirators retain pricing discretion and do not communicate directly with each other, the court found that the alleged co-conspirators used the pricing algorithm at different points in time, no confidential or otherwise nonpublic information was exchanged, and the alleged co-conspirators were not bound to accept the algorithm's pricing recommendations.[38]

*Potato cartel.* From July 2022 to 2024, potato prices spiked nearly 50%.[39] A pending 2024 class action alleges the four largest potato merchants – which together control 95% of the potato market – used potato price data aggregation services, collective action through trade associations, and direct communication to exchange pricing data and other sensitive information, leading potato prices to spike by nearly 50% between July 2022 and 2024.[40] Among other things, the complaint alleges, "Defendants and their co-conspirators entered into continuing agreement to regularly exchange detailed, timely, competitively sensitive information which is non-public and

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[32] Statement of Interest (March 1, 2024), in *Yardi, supra*, pp. 2-3, https://www.justice.gov/d9/2024-03/420301.pdf.
[33] *Id.* at p. 7, fn. 4. (Emphasis in original.)
[34] *Gibson v. Cendyn Grp., LLC* (D.Nev. May 8, 2024, No. 2:23-cv-00140-MMD-DJA) 2024 U.S.Dist.LEXIS 83547.
[35] *Id.* at 6.
[36] Brief for the DOJ as Amicus Curiae, *Gibson v. Cendyn Group LLC,* No. 24-3576 (9th Cir. filed Oct. 24, 2024), Dkt. No. 28.1, pp. 18, 22-24.
[37] *Id.* at p. 36.
[38] *Cornish-Adebiyi, et al. v. Caesars Entertainment, Inc., et al.*, No. 1:23-CV-02536-KMW-EAP (D. N.J. Sept. 30, 2024).
[39] Daniel Wu, "'Potato cartel' mashed competition to raise french fry prices, lawsuits say" (Nov. 20, 2024), https://www.washingtonpost.com/business/2024/11/20/potato-cartel-price-fixing-lawsuit/.
[40] *Govea, et al. v. National Potato Promotion Board, et al.,* Case No. 1:24-cv-11816, (N.D. Ill. 2024), https://www.classaction.org/media/govea-v-national-potato-promotion-board-et-al.pdf. Emphasis added.

is about their operations. This agreement is an unreasonable restraint of trade under the Sherman Act."[41]

*Multiplan.* A recent lawsuit alleged that Multiplan – a healthcare technology company – colluded with insurers, including Aetna, Cigna, UnitedHealth, and Blue Cross Blue Shield Association, to suppress reimbursement rates using its pricing algorithm. In ruling on the defendants' motion to dismiss, the court found that the plaintiffs failed to allege sufficient facts showing Multiplan's algorithm compiles competitively sensitive data from insurers; however, the plaintiffs had sufficiently alleged that Multiplan itself "played an active role as a go-between" for third-party payors.[42]

In sum, these cases and the arguments advanced by DOJ appear to generally emphasize the nonpublic, competitively sensitive nature of pricing information shared via an algorithmic intermediary, as well as the extent to which the competitors have discretion to depart from the recommended prices generated by the algorithm.

5) **Law Revision Commission working group report**. AR 95 (Cunningham, 2021) called upon the California Law Revision Commission to study whether the Cartwright Act requires updating. To assist in its study, the Commission formed working groups of experts, one of which issued a report on "Competition and Artificial Intelligence." Regarding algorithmic collusion, the working group concludes:

> . . . The Cartwright Act generally prohibits any combinations or agreements which unreasonably restrain trade or fix or control prices. As currently interpreted by the courts, the Cartwright Act requires a "combination" or "concerted action" between 2 or more independent economic entities. Given the increasing use of software programs containing or relying on pricing algorithms, the Legislature might consider declaring that the "concerted action" requirement of the Cartwright Act encompasses multiple competitors that *knowingly use the same or similar revenue management software programs containing or relying on pricing algorithms that utilize nonpublic competitor information to train or inform any price recommendations.*
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> Consistent with the position of the DOJ . . ., the Legislature might also clarify that direct communications are not required to show proof of a "combination" or "concerted action" among competitors, as the Cartwright Act covers tacit *as well as* express agreements. This is in accord with the position of the DOJ . . . that Section 1 of the Sherman Act prohibits "tacit agreements"—that is where one co-conspirator invites participation in an illegal price-fixing scheme and other co-conspirators act in accordance with the scheme, showing acceptance through a course of conduct.
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> Further, the Legislature might make clear that the Act prohibits competitors from "delegating key aspects of pricing decision making to a common entity, even if the competitors never communicate with each other directly." Further, to refute the argument that there can be no actionable claim of price fixing because the algorithm's recommendations are not binding, the Legislature could declare that, under the Cartwright Act, "an agreement among

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[41] *Id.* at p. 22.
[42] *In re Multiplan Health Ins. Provider Litig.* (N.D.Ill. June 3, 2025, No. 24 C 6795) 2025 U.S.Dist.LEXIS 104989, at *72.

> competitors to fix the *starting point* of pricing is per se unlawful, no matter what prices the competitors ultimately charge." [43]

6) **What this bill would do.** This bill prohibits a person from distributing, or making recommendations based on, a pricing algorithm if the person intends or reasonably expects that two or more competitors will use the pricing algorithm for the same product, rental property, or services, and the person knows or should know the pricing algorithm processes nonpublic competitor data. The bill similarly prohibits the use of a recommendation of such pricing algorithms if the person knows or should know that a competitor used the product, rental property, or service in the same market. The bill does not apply if all of the competitor data processed by the pricing algorithm was collected at least one year before the use, recommendation, or distribution of the pricing algorithm.

*Enforcement.* Under the bill, public prosecutors may bring a civil action for a violation seeking restitution, punitive damages, and a civil penalty of up to $25,000, depending on specified factors a court must consider. The bill also provides that, for a person who distributes a pricing algorithm, each authorized user of the pricing algorithm constitutes a separate violation. For a person who makes recommendations based on the use of the pricing algorithm, each instance in which the person makes a recommendation constitutes a separate violation. For a person who uses the recommendation of a pricing algorithm, each calendar month of use constitutes a separate violation.

An affirmative defense to liability is available if the person demonstrates by a preponderance of evidence that they exercised reasonable due diligence before using the recommendation of a pricing algorithm. This provision draws from a smartly-crafted similar provision in SB 384 (Wahab).

Proponents argue that traditional antitrust law's focus on the presence of some form of agreement fails to clearly address algorithmically-mediated price coordination that occurs without a collusive meeting of the minds. This bill is necessary, they assert, to combat this growing phenomenon, and thereby help reduce soaring prices.

In describing how the bill would apply, the Assembly Judiciary Committee analysis of the bill set forth the following hypothetical scenarios:

> ***Hypothetical #1 – Lawful under SB 295.*** A permissible example under the bill would be a travel app such as Hopper or Kayak that aggregates publicly available airfare data from airlines to help consumers identify the best time to purchase tickets. These apps do not rely on nonpublic or competitively sensitive information, nor do they communicate price recommendations back to the airlines. Their use is unilateral and consumer-facing, promoting price transparency rather than coordination. Therefore, such conduct would not be covered by SB 295.
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> ***Hypothetical #2 – Unlawful under SB 295.*** Suppose a dynamic pricing vendor licenses an AI-powered tool to three large grocery chains in the same regional market. The algorithm

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[43] "Report to the California Law Review Commission Antitrust Law: Study B-750: Competition and Artificial Intelligence," p. 5, https://clrc.ca.gov/pub/Misc-Report/ExRpt-B750-Grp8.pdf. Emphasis in first paragraph added; emphasis in third paragraph in original.

collects nonpublic pricing data, discounting practices, and volume information from each chain's internal systems, and uses that data to recommend "market-optimized" pricing strategies across all three. If the vendor knows or reasonably expects that the algorithm will be used to influence pricing decisions across these competitors, and if the grocery chains know or should know the algorithm is trained on confidential data and used across the market, then both the vendor and users could be liable under SB 295.[44]

7) **Related legislation.** Several legislative proposals that seek to address algorithmic collusion have recently been proposed, including:

- At the federal level, Senator Amy Klobuchar recently reintroduced her "Preventing Algorithmic Collusion Act" (S. 232) which makes it presumptively unlawful for a person to use or distribute a pricing algorithm that uses, incorporates, or was trained with nonpublic competitor data.

- Colorado Governor Jared Polis recently vetoed a bill that would have prohibited the sale, distribution, or use of algorithmic devices using public and nonpublic data to coordinate the setting of price or occupancy levels between two or more landlords, a violation of which would be deemed a violation of the Colorado Antitrust Act of 2023. In his veto message, Governor Polis cited concerns around inadvertently banning tools that may assist in efficiently managing residential real estate to ensure people can access housing. He stated he would open to supporting a bill that "makes a distinction between collusive and non-collusive uses of nonpublic competitor data."

- AB 325 (Aguiar-Curry, 2025) provides that it is unlawful 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 in violation of the Cartwright Act. The bill also provides that it is unlawful for a person to use or distribute such algorithms if the person coerces another to set or adopt a recommended price or commercial term for the same or similar products or services. The bill additionally changes the pleading standard in Cartwright Act cases. The bill is pending in the Senate Appropriations Committee.

- SB 52 (Pérez, 2025) is similar to this bill, but it applies to rental housing only.

- SB 384 (Wahab, 2025) is similar to this bill, but it applies to goods rather than products, and the civil penalty is capped at $1,000 per violation.

***ARGUMENTS IN SUPPORT:*** The bill's sponsors, the AIDS Healthcare Foundation, explains its support of the measure:

The bill defines competitor data and makes it clear that the prohibition only applies when the person knows that the algorithm uses or incorporates competitor data. Civil enforcement of this prohibition lies with the Attorney General or a district attorney.

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

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[44] Asm. Jud. Comm. Analysis of SB 295 (as amended Jun. 27, 2025), pp. 9-10.

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

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

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

[…]

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

***ARGUMENTS IN OPPOSITION**:* A coalition of opponents, led by Chamber of Commerce, writes:

First and foremost, this bill appears premised on a mistaken presumption that pricing algorithms are inherently problematic, if not unlawful. On the contrary, pricing algorithms are extremely common, widely used, tools that enable businesses to enhance efficiencies by avoiding manual pricing, saving money and lowering costs for consumers, and making prices far more responsive to changes in supply and demand - all without engaging in any anti-competitive conduct.

In contrast, price collusion (or price fixing) – whether by humans or machines – is plainly illegal under current federal and state laws, including the federal Clayton Act and the California Cartwright Act. Indeed, existing antitrust laws prohibit competitors from colluding on price in any manner, whether through using a pricing algorithm or otherwise. **In other words, whether a price fixing conspiracy is hatched by salespeople conspiring or computers running algorithms, collusion is collusion and is already effectively covered by existing law. To be clear, however, simply using a pricing algorithm does not evidence collusion or inherently constitute price *fixing***.

Retailers use pricing algorithms to ensure they are offering the most competitive prices to consumers. Realtors use them to help clients set home prices. Banks use them to set terms (e.g. rates and fees) for services. Hospitality, airlines, transportation network companies, utilities, ticket venues, and many others use them for dynamic pricing. The list goes on. Yet **SB 295** creates vague, broad prohibition that may conflate lawful algorithmic pricing with

unlawful conspiracies. And in doing so, the bill risks removing a valuable tool for setting dynamic pricing and impose significant costs on all businesses that use pricing algorithms – but especially small businesses – thereby reducing competition, rather than promoting it. (Emphasis in original.)

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

AIDS Healthcare Foundation (Sponsor)
City of Emeryville
Private Equity Stakeholder Project

**Oppose**

American Property Casualty Insurance Association
Association of California Life and Health Insurance Companies
Calbroadband
California Apartment Association
California Apartment Association
California Building Industry Association (CBIA)
California Chamber of Commerce
California Credit Union League
California Fuels and Convenience Alliance
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Restaurant Association
California Retailers Association
California Travel Association
Chamber of Progress
Civil Justice Association of California (CJAC)
Insights Association
National Association of Mutual Insurance Companies
Personal Insurance Federation of California
Software Information Industry Association
Technet

**Oppose Unless Amended**

Insurance Services Office, INC.
Realpage, INC.

**Analysis Prepared by**: Josh Tosney / P. & C.P. / (916) 319-2200