Date of Hearing: July 1, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 384 (Wahab) – As Amended June 26, 2025

SENATE VOTE: 28-10

SUBJECT: PREVENTING ALGORITHMIC PRICE FIXING ACT: PROHIBITION ON CERTAIN PRICE-SETTING ALGORITHM USES

KEY ISSUE: SHOULD CALIFORNIA PROHIBIT THE DISTRIBUTION AND USE OF PRICING ALGORITHMS THAT ARE TRAINED ON NONPUBLIC COMPETITOR DATA AND THAT ARE INTENDED TO BE USED BY TWO OR MORE COMPETITORS IN THE SAME MARKET TO SET PRICES?

SYNOPSIS

SB 384 (Wahab) is one of four bills this session targeting algorithmic price coordination—but unlike a price-fixing cartel, the authors have not colluded. SB 52(Perez) and SB 295(Hurtado), which target similar behavior, are independently up for consideration by this Committee today.

SB 384 responds to the growing risk that businesses may rely on shared pricing algorithms to achieve coordinated pricing outcomes that suppress competition—without any express agreement or overt collusion. These tools, often developed by third-party vendors and deployed across firms in the same market, can produce synchronized prices and discourage competition—all without any human agreement, handshake, or email. According to the author, the result is a digital-age version of a price-fixing cartel, but one that may elude traditional antitrust enforcement due to the lack of direct communication or provable agreement. This bill seeks to address this by creating a new statutory cause of action that prohibits selling, licensing, providing or using a price-setting algorithm that is (1) intended for use by two or more competitors in the same market, (2) trained on nonpublic competitor data, (3) knowingly or recklessly used to set prices, supply levels, or rental terms. It creates a civil violation enforceable only by public prosecutors, while preserving a narrow affirmative defense for those who can demonstrate due diligence—such as securing written assurances from vendors about the data used.

Critics contend the bill targets "technology, not conduct." But SB 384, as recently amended, is focused on a specific misuse of pricing tools: when multiple firms rely on a shared algorithm that processes their own confidential data to align prices. SB 384 does not affect unilateral pricing, tools based solely on public data, or consumer-facing analytics. It simply attempts to draw a clear legal boundary around an increasingly common practice that could undermine price competition in core commercial markets. Similar amendments have been taken in all three price-fixing bills pending today (SB 384, SB 295 and SB 52) to ensure that these measures address the problem of collusion rather than stifling the promise of technology.

This measure is author-sponsored and supported by a broad coalition, including public interest and housing advocates. It is opposed by an industry coalition led by the Chamber of Commerce, among others. In the event of its successful passage out of this Committee, this measure will be heard in the Privacy and Consumer Protection Committee.

SUMMARY: Prohibits the distribution and use of pricing algorithms that are trained on nonpublic competitor data intended to be used by two or more competitors in the same market. Specifically, **this bill**:

1) Prohibits a person from selling, licensing, providing, or using a price-setting algorithm with the intent that it be used by two or more competitors in the same market if the person knows or should know that the algorithm processes nonpublic input data to set:

   a) Prices or supply levels of a good or a service.

   b) Rent or occupancy levels of rental property.

2) Defines certain key terms, including:

   a) "Nonpublic input data" means data that is confidential, nonpublic, and sensitive information of competitors.

   b) "Price-setting algorithm" means a software, computer system, computer process, algorithmic program, or artificial intelligence that processes nonpublic input data for the purpose of producing a pricing or rental strategy, but does not include a multiple listing service, as provided.

   c) "Competitors" means two or more persons or business entities, including landlords, that offer similar or substitutable goods, services, or real property for lease in the same relevant market to the same or overlapping customer base.

3) Provides an affirmative defense for 1) by demonstrating by clear and convincing evidence that the person exercised reasonable due diligence, including obtaining written assurances from the person selling, licensing, or providing the algorithm that the algorithm does not process nonpublic input data.

4) Provides that for a person who sells, licenses, or provides a price-setting algorithm that violates 1), each user that uses the algorithm constitutes a violation.

5) Provides that for a person who uses the price-setting algorithm that violates 1), each calendar month of use constitutes a separate violation.

6) Provides for public enforcement by the Attorney General or local prosecutors.

7) Permits the recovery of any of the following forms of relief, or a combination of all them:

   a) Injunctive relief;

   b) Restitution; or

   c) Civil penalties of up to $1,000 per violation.

8) Requires the award of attorney's fees and costs to the Attorney General or the local prosecutor, if they are the prevailing party in the action.

EXISTING LAW:

1) Establishes the Sherman Antitrust Act of 1890 (Sherman Act). (15 U.S.C. Sections 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. Section 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. Section 15c.)

4) Establishes the Clayton Act. (15 U.S.C. Sections 12-27.)

5) Defines, under the Clayton Act, "antitrust laws" to include the Sherman Act, certain provisions of the Wilson Tariff Act, and the Clayton Act, as amended. (15 U.S.C. Section 12.)

6) Makes illegal, under the Clayton Act, certain exclusive dealing agreements, tying contracts, corporate mergers and acquisitions, and interlocking directorates, as specified. (15 U.S.C. Sections 13-14.)

7) Prohibits every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is, including specified noncompete clauses, subject to specified exemptions. (Business and Professions Code Section 16600 *et seq*. All further statutory references are to the Business and Professions Code, unless otherwise specified.)

8) Establishes the Cartwright Act. (Section 16700 *et seq*.)

9) 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.

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 in any manner might be affected. (Section 16720.)

10) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Section 16726.)

11) Establishes the Unfair Practices Act (UPA), which is intended to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented. (Section 17000 *et seq*.)

12) Prohibits, under the UPA, a range of behavior that reduces competition in pricing, including specified locality discrimination in pricing, sales under costs or loss leaders made with the intent of injuring competitors or destroying competition, and contracts for the performance of warranty service and repair below the cost of the service or repair. (Sections 17040-17051.)

13) Permits the head of any department in the state to make investigations and prosecute actions concerning violations of law; as part of those investigations, the department head may inspect and copy books, records, and other items, issue subpoenas for the attendance of witnesses and the production of documents or other tangible things, and promulgate interrogatories. (Government Code Sections 11180, 11181.)

14) For purposes of investigating potential violations of the Cartwright Act and the UPA, extends all of the investigative powers granted to the Attorney General pursuant to 13) to the district attorney of any county when the district attorney reasonably believes that a violation has occurred. (Government Code Section 16759 (a).)

15) Establishes that a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that they are asserting. (Evidence Code Section 500.)

16) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Business and Professions Code Section 17200 *et seq*.)

17) Establishes the Consumers Legal Remedies Act (CLRA), which proscribes certain unfair methods of competition and certain unfair or deceptive acts or practices undertaken by a person in a transaction intended to result or that results in the sale or lease of goods or services to a consumer, including advertising goods or services with intent not to sell them as advertised. (Civil Code Section 1770 *et seq.*)

18) Defines "goods" as "tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property." (Civil Code Section 1761 (a).)

19) Defines "services" as work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods. (Civil Code Section 1761 (b).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: SB 384 is one of three measures currently pending before the Assembly Committee on the Judiciary seeking to address "algorithmic price fixing."

Algorithmic price fixing refers to the use of software—often powered by artificial intelligence—to set or recommend prices in ways that result in coordinated outcomes between competitors without any formal agreement. Third-party vendors now offer pricing tools trained on large datasets, sometimes including nonpublic or sensitive market information, which can be deployed across competing firms. These tools can respond rapidly to market changes, discouraging price competition and creating uniform pricing—all while preserving the outward appearance of independent decision-making. The result is a technologically enabled form of price-fixing that achieves the same anticompetitive effects as traditional collusion, but without overt coordination, making it difficult to detect or prosecute under current antitrust law. As explained by the author:

> Rapid technological advances have resulted in corporations using tools and resources that result in digital collusion. Corporations rely on the existence of these tools as permission to use them without considering the legal implications. SB 384 places responsibility on these corporations to evaluate the tools they use to process data associated with their own pricing structures and stock by prohibiting the use of tools that collect private data from two or more corporations for the purposes of analyzing and processing the data to create pricing models. This prohibition will force corporations to be more discerning regarding the digital tools they use, and reduce the likelihood of corporations accidentally engaging in digital handshakes that result in price-fixing and market manipulation.

Algorithmic price fixing. Modern algorithmic coordination has its institutional roots in the aftermath of the Airline Deregulation Act of 1978, which eliminated federal oversight of airline fares. Shortly thereafter, major carriers created the Airline Tariff Publishing Company (ATPCO), a centralized platform for submitting and disseminating fare data. Although ATPCO nominally served as a neutral repository, it allowed airlines to signal pricing intentions and monitor rival responses in near real-time, thereby enabling tacit collusion—a form of price coordination not easily captured by conventional antitrust tools. The Department of Justice (DOJ) challenged ATPCO's structure in the early 1990s under Section 1 of the Sherman Act, arguing that it facilitated price signaling among competitors. The resulting settlement permitted ATPCO to continue with minimal restrictions, effectively sanctioning data-driven pricing coordination in the absence of direct collusion or express agreements.

Today's version of this phenomenon has been dramatically amplified by advances in artificial intelligence (AI) and data infrastructure. Third-party vendors now offer algorithmic pricing systems trained on vast market datasets—sometimes including nonpublic or competitively sensitive information—which are simultaneously deployed across competing firms. These systems can rapidly adjust prices in reaction to competitors' changes, discouraging undercutting and reducing market variability, all while maintaining the appearance of independent decision-making. Unlike traditional cartels, these algorithmic tools do not require express communication between competitors and may even operate without any human intervention at all. The result is a technologically mediated form of price fixing that can achieve the same anticompetitive effect as a classic conspiracy—higher prices, suppressed competition, and consumer harm—but in a way that existing legal frameworks struggle to capture. (David Dayen, *Three Algorithms in a Room: How Big Data Supercharged Collusion*, The American Prospect (June 5, 2024) https://prospect.org/economy/2024-06-05-three-algorithms-in-a-room.) The absence of legislative action in the wake of ATPCO, and the continued judicial reliance on formal notions of "agreement," have left a legal gray area in which algorithmic collusion remains both highly illegal in principle and difficult to prosecute in practice.

Existing law - The Cartwright Act. California's main antitrust statute is the Cartwright Act, codified at Business and Professions Code Sections 16700 to 16770. Enacted in 1907, the Act predates the federal Clayton Act and closely parallels Section 1 of the Sherman Act (15 United States Code Section 1), which prohibits contracts, combinations, and conspiracies in restraint of trade. Like its federal counterpart, the Cartwright Act is designed to preserve and promote free competition in commercial markets. However, California courts have construed it as "broader in range and deeper in reach than the Sherman Act." (*Cianci v. Superior Court* (1985) 40 Cal. 3d 903, 920.)

Business and Professions Code Section 16720(e)(4) defines a "trust" to include combinations or agreements in which competitors "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." In other words, the Cartwright Act proscribes even indirect or subtle forms of coordinated behavior that may affect market prices or restrict trade.

To violate the Act, conduct must typically involve:

1. An agreement or concerted action between two or more people (so-called "single firm conduct" is not encompassed by the Act); and

2. Conduct that unreasonably restrains trade.

Under the Cartwright Act, an "agreement" or "concerted action" refers to a mutual understanding or coordinated conduct between two or more persons to restrain trade. It is the foundational element of any antitrust claim under both the Cartwright Act and the federal Sherman Act Section 1. (*Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 928 (Cartwright Act requires concerted action); *Texaco, Inc. v. Dagher* (2006) 547 U.S. 1, 5 (federal antitrust law also requires concerted action).)

An agreement under the Cartwright Act does not require a written contract or direct evidence of collusion. California courts recognize that circumstantial evidence may be used to infer concerted action, particularly because direct evidence of collusion is often unavailable in antitrust cases. (*In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 146.) The concerted action may be established through indirect mechanisms, such as the exchange of competitively sensitive information, market signaling, or the shared use of pricing algorithms that lead to parallel pricing behavior.

However, parallel conduct alone is insufficient to prove concerted action. Courts require additional "plus factors" that support an inference of agreement, such as the existence of facilitating practices, opportunities to collude, or monitoring mechanisms that suggest firms are consciously coordinating their behavior. Once concerted action is established (either through direct or circumstantial evidence), the court turns to the second prong: whether the conduct unreasonably restrains trade.

Under California law, a restraint is considered unreasonable if it harms competition, rather than merely harming individual competitors. (*G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 269.) ("It is often repeated in antitrust cases that the law seeks to protect competition, not competitors; and stiff competition is encouraged, not condemned.") (internal quotations omitted).) Courts evaluate this through either the per se rule or the rule of reason. Certain types of restraints are deemed per se unlawful—such as horizontal price fixing, market allocation, and bid rigging—because they are presumed to always harm competition and lack any legitimate justification. Other restraints are analyzed under the rule of reason, which requires a case-specific inquiry into the conduct's actual or likely anticompetitive effects, the parties' market power, and any procompetitive justifications. (*Palsson*, *supra,* 16 Cal.3d at 934-35.)

AB 325 (Aguiar-Curry), which is currently pending in the Senate Judiciary Committee, seeks to amend the Cartwright Act to prohibit the use or distribution of a common pricing algorithm by separate entities if it is part of a conspiracy to restrain trade or if they distribute or use a common pricing algorithm with the intent to fix prices or terms for similar products or services in California, especially if they coerce others to adopt those prices or knowingly participate in a coordinated pricing scheme.

Existing law – the California Legal Remedies Act, the Unfair Competition Law, and the Unfair Practices Act. While the Cartwright Act remains California's primary vehicle for antitrust enforcement, the state also possesses powerful consumer and commercial protection statutes that play a complementary role in deterring unfair, deceptive, and anticompetitive conduct—including the use of algorithmic pricing tools that distort markets or mislead consumers.

California's Unfair Competition Law (Business and Professions Code Section 17200 *et seq*.) prohibits any "unlawful, unfair or fraudulent business act or practice." The statute is broadly framed to encompass not only conduct that violates other laws (including the Cartwright Act), but also business behavior that is deceptive, anticompetitive, or contrary to public policy, even if not independently unlawful. (*See Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180–182.) Courts have recognized that the UCL provides a flexible enforcement tool for redressing market harms that fall outside traditional antitrust theories, including the coordinated use of information systems or platform tools that suppress price competition or obscure competitive choices. In *Cel-Tech,* the California Supreme Court affirmed that the UCL is broader than traditional antitrust statutes and can reach "incipient violations of antitrust laws" or conduct that "violates the policy or spirit" of those laws, even if not independently actionable under the Cartwright Act or Sherman Act. (*Id.* at 187.) The Court emphasized that a "practice may be deemed unfair even if not specifically proscribed by some other law." (*Id.* at 180.) While the Court adopted a narrower "tethering" standard for claims between competitors, it made clear that practices that threaten competition through coordination or structural market manipulation may be challenged under the UCL—particularly where the conduct violates antitrust principles in spirit if not in letter. (*Id.* at 186-87.) Recent court cases are proceeding under that theory. For example, in *People v. Amazon.com, Inc.* (Super. Ct. San Francisco City & County, No. CGC-22-601202) (2022), the Attorney General alleges that Amazon's contractual pricing rules and algorithmic pricing enforcement mechanisms operate to suppress price competition across the digital marketplace. The state's theory is that Amazon discourages sellers from offering lower prices elsewhere by using algorithms to demote or delist those products, thereby distorting competitive outcomes and harming consumers—even without a classic "agreement" among competitors. This case has survived demurrer and is moving forward on the merits.

In tandem, the Consumer Legal Remedies Act (Civil Code Section 1750 *et seq*.) protects consumers from deceptive methods of competition and unfair or misleading acts or practices in the sale or lease of goods or services. The CLRA prohibits, among other things, misrepresenting the source, characteristics, or benefits of a product or service, as well as bait-and-switch pricing tactics and other forms of consumer manipulation. (Civil Code Section 1770(a).)

What problem is this bill trying to solve? The author explains that SB 384 addresses the challenge posed by algorithmic price coordination—a modern antitrust issue in which competitors rely on shared AI or pricing tools to achieve collusive outcomes without explicit agreements. As firms increasingly turn to artificial intelligence and predictive analytics to make pricing decisions, some third-party platforms or vendors have begun offering tools that rely on pooled data from multiple market participants. Supporters contend that these tools can suppress price competition, stabilize market rates, and limit downward pricing pressure, particularly in concentrated markets such as rental housing or e-commerce. Because existing antitrust statutes like the Cartwright Act and the Sherman Act generally require evidence of agreement or concerted action, current law struggles to reach tacit coordination facilitated through shared algorithms. And the existing consumer protection framework might fall short of properly capturing the conduct at issue. SB 384 aims to close this gap by establishing a new statutory prohibition that applies where algorithmic tools are intentionally used to influence market behavior among competitors through the use of nonpublic input data.

Who does bill target? SB 384 targets both providers and users of price-setting algorithms who contribute to coordinated pricing behavior among competitors through the use of nonpublic, competitively sensitive data. Specifically, the bill applies to any person who sells, licenses, or provides a price-setting algorithm with the intent that it be used by two or more competitors in the same market, and who knows or should know that the algorithm processes nonpublic input data. It likewise applies to any person who uses such an algorithm under the same conditions.

The bill focuses on conduct by horizontal competitors—defined as two or more persons or business entities (including landlords) that offer similar or substitutable goods, services, or real property in the same relevant market to the same or overlapping customer base. The targeted entities include software vendors, technology consultants, developers, or platforms that distribute algorithmic pricing tools trained on confidential competitor data, as well as businesses that implement these tools to set their own prices, supply levels, or rental terms.

What does this bill do? Under SB 384, it is unlawful to sell, license, or otherwise provide a price-setting algorithm to two or more competitors in the same market with the intent that it be used to set prices, supply levels, rent, or occupancy, if the person knows or should know that the algorithm processes nonpublic input data. Similarly, it is unlawful to use such an algorithm for price-setting where the user knows or should know that the tool is trained on competitively sensitive data and has also been used by another competitor for the same purpose. Liability attaches even if there is no express agreement among the parties—effectively replacing the "agreement" element of the Cartwright Act with the functional equivalent of coordinated algorithmic conduct. The bill includes a limited affirmative defense where a person demonstrates that they exercised reasonable due diligence that the algorithm does not process non-public input data. This is meant to protect small businesses who may unknowingly rely on third-party tools without access to their underlying data practices, provided they took reasonable steps—such as obtaining written assurances from the vendor—to ensure the tool did not rely on confidential competitor data.

While the bill draws from the doctrinal structure of California's Cartwright Act, it creates a distinct liability framework that does not require proof of an explicit agreement or traditional antitrust injury. Instead, it is premised on the concept that the shared use of algorithmic tools trained on nonpublic competitor data can produce the same anticompetitive outcomes as express collusion—namely, higher prices, reduced output, and suppressed price competition—but without direct communication or overt consensus.

By doing so, SB 384 shifts the enforcement paradigm from traditional cartel detection to a per se prohibition on a specific form of algorithmic collusion. The bill eliminates the need to prove market power, define a relevant market, or demonstrate harm to consumers or competition, thereby avoiding the complex economic analysis often required under the rule of reason required under the Cartwright Act. Instead, it identifies the conduct itself—deploying or relying on shared price-setting algorithms trained on nonpublic competitor data—as inherently anticompetitive, and therefore unlawful.

Hypothetical #1 – Lawful under SB 384. 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 384.

Hypothetical #2 – Unlawful under SB 384. Suppose a dynamic pricing vendor licenses an AI-powered tool to three large grocery chains in the same regional market. The algorithm 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 384.

How will this bill be enforced? SB 384 would be enforced exclusively through civil enforcement actions brought by public prosecutors. Specifically, the Attorney General, district attorneys, city attorneys, or county counsel are authorized to file suit in any court of competent jurisdiction for violations of the bill. These enforcement actions may seek a range of remedies, including:

- Civil penalties of up to $1,000 per violation. For users, each calendar month of use is a separate violation. For persons who sell or license the algorithm, violations are tallied by each user who uses the offending algorithm. So for example, if a person sells a price-setting algorithm that violates SB 384 to 100 separate users, that person would be deemed to have committed 100 separate violations.

- Injunctive relief to prevent ongoing or future violations.

- Restitution (i.e., ill-gotten gains).

- Reasonable attorney's fees and costs if the public prosecutor prevails in the action.

Importantly, SB 384 does not authorize private rights of action, nor does it duplicate remedies under the Cartwright Act. Instead, it operates as a standalone, per se regulatory enforcement regime focused on deterring and dismantling the technological infrastructure that enables algorithmic collusion.

How does this bill compare to SB 52 and SB 295? SB 384 prohibits the distribution or use of a price-setting algorithm with the intent that it be used by two or more competitors in the same market, where the algorithm processes nonpublic input data. It applies across sectors and explicitly includes rental housing by referencing "rent or occupancy levels." This makes its scope broader than SB 52, which is limited to residential rental markets, but more targeted than SB 295, which applies to all commercial terms but does not reference housing or real estate.

Unlike SB 295 and SB 52, SB 384 includes a robust affirmative defense: parties who perform reasonable due diligence and obtain written assurances that the algorithm does not process nonpublic data can avoid liability. SB 295, on the other hand, includes a safe harbor for use of data more than one year old but no diligence defense. And SB 52 excludes liability where only public, aggregate, or non-identifiable data is used, and defines multiple exemptions for legitimate sources of rental information.

SB 384 provides for public enforcement by the Attorney General or local prosecutors and imposes civil penalties of up to $1,000 per violation, with violations accruing per user or per month of use. It mirrors SB 52's penalty amount but lacks SB 52's private right of action and explicit tenant remedies. SB 295 provides a higher ceiling for penalties—up to $1 million—and allows recovery of treble damages.

Opposition's concerns. A broad industry coalition, spearheaded by the California Chamber of Commerce, oppose an earlier version of this bill. While some of their concerns may have been addressed by recent amendments, many likely remain.

Opposition argues that "[a]t its core, SB 384 …regulates the technology itself rather than its misuse…Like several other pricing algorithms moving through the Legislature, SB 384 appears rooted in an assumption that pricing algorithms are inherently problematic or unlawful, as opposed to attempting to identify and halt demonstrably anti-competitive behaviors or *price-fixing* practices." Contrary to the claim that SB 384 broadly prohibits the use of pricing software or algorithmic tools, the bill, as recently amended, is targeted at a specific and high-risk form of conduct: the intentional use of a shared price-setting algorithm that is trained on nonpublic, competitively sensitive data from multiple competitors in the same market, that the user knows or should know processes nonpublic data. It does not prohibit the use of pricing algorithms as a general matter. Businesses may continue to use their own internal tools, rely on public data, and engage in dynamic pricing based on supply and demand. What SB 384 prohibits is the use or distribution of algorithmic tools that function as digital conduits for competitor coordination—tools that process confidential cross-firm data to generate pricing strategies and thereby erode independent decision-making.

The bill does not regulate the technology itself, but rather its misuse in a collusive context. It requires multiple limiting elements before any liability attaches: (1) the algorithm must be used or distributed with the intent that it be used by two or more competitors in the same market; (2) the person must know or should know that the algorithm processes nonpublic input data; and (3) the data must be competitively sensitive and drawn from rival firms. These elements ensure that SB 384 targets only conduct that replicates the economic effects of price-fixing—a long-recognized antitrust violation—not the use of technology per se.

Importantly, SB 384 does not apply to algorithms trained on public pricing data, nor to tools used unilaterally by a single firm. It would not affect common use cases such as retailers adjusting prices based on market trends, realtors estimating listing values using public sales data, or banks setting terms based on internal risk models. It expressly allows for dynamic pricing and competitive differentiation. What it prohibits is the use of a shared algorithm that encourages parallel pricing behavior across firms by analyzing confidential information that competitors would not lawfully exchange in any other context.

Pending litigation on algorithmic collusion and the California Law Review Commission (CLRC). The simultaneous consideration of SB 295, SB 52, and SB 384 (as well as AB 325 currently pending in the Senate Judiciary Committee) is not happening in a vacuum. As discussed in detail in the Assembly Privacy Committee analysis of AB 325 (Aguiar-Curry, 2025), at pp. 6-8, case law on these issues is evolving and there is an active CLRC working group tasked with studying whether the Cartwright Act needs updating, especially in light of technological changes.

As discussed in Privacy's analysis of AB 325, a number of high-profile federal and state enforcement actions are actively testing whether algorithmic pricing platforms like RealPage, RENTmaximizer, and Cendyn violate existing antitrust and consumer protection statutes. In the RealPage litigation, for example, the U.S. Department of Justice and multiple state attorneys general, including California's, are pressing forward with claims under the Sherman Act without needing any new statutory authority. In that case, the DOJ has made clear its position: "Automating an anticompetitive scheme does not make it less anticompetitive." (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.) Similarly, in ongoing cases involving Cendyn's hotel pricing software, courts are grappling with whether joint use of algorithms constitutes concerted action under existing federal antitrust law.

Furthermore, the CLRC working group has proposed several modest reforms, such as clarifying that concerted action can include the knowing use of common algorithms trained on competitor data, even in the absence of direct communication. The Commission's final recommendations may offer a more comprehensive and integrated approach to updating California antitrust law.

***ARGUMENTS IN SUPPORT**:* Oakland Privacy, one of the bill's supporters, explains:

> Senate Bill 384 is one of many, with an emphasis on many, bills this year focused on algorithmic pricing formulas and their detrimental effects on affordability for consumers and on market competition. Senate Bill 384 goes further than a similar bill before the committee at this hearing, SB 52, in that it sweeps beyond rental price-setting algorithms like RealPage to encompass any price fixing program as long as that program's pricing strategy is based on the use of nonpubic data. It is also worthwhile to note that the bill also is more narrow than a surveillance pricing proposal currently in the Assembly AB 446, which seeks to limit differential pricing based on public data that includes personally identifying information including behavorial profiling and tracking.
>
> There is not much doubt that multiple sellers sharing nonpublic data about a good or service for the purpose of deciding on a pricing strategy is classic price-fixing. SB 384 in more or less restating current law that price-fixing is illegal, and seeks to clearly define that price-fixing is still price-fixing if a machine does it and that a sole individual seller can be said to engage in price-fixing if the pricing strategy is determined by an algorithmic process that contains nonpublic data from two or more sellers.
>
> In other words, the absence of two physical different sellers does not legalize the behavior as long as the machine is utilizing the multi-seller non-public competitor data to develop the price-fixing strategy on behalf of a seller.
>
> Senate Bill 384 would eliminate such use of algorithms to price-fix in the above-described manner and prohibit their use in California, although potentially such algorithmic programs could be used or trained using public data to develop pricing strategies, and that use would remain untouched by this bill.
>
> We support this general concept as the adaption of classic antitrust law to the same old price-fixing behavior in new guises and formats due to technological innovation and the increasing capacity of artificial intelligence programming. Consumers are entitled to the benefits of marketplace competition between various sellers, which is the primary lever for downward pressure on prices in pure market-based capitalism. When sellers collude secretively to keep prices artificially high, then consumers lose their strongest weapon which is the ability to walk to another seller should one particular seller raise their price too high.

ARGUMENTS IN OPPOSITION*:* The Chamber of Commerce, which is leading the opposition coalition, explain some of their concerns with the prior version of the bill:

> The fundamental concern we have with SB 384 is that it prohibits the use of certain technology in competitive pricing under the guise of prohibiting price fixing. Under the introduced version of the bill, it very clearly did so by prohibiting any business from using pricing models of any sort to set a price or supply level of a good or service based on any information related to pricing or supply – whether that information was publicly available or nonpublic/confidential. That distinction between publicly available and nonpublic or confidential information is significant, because it preserves activities that businesses long performed in making pricing decisions, and done so legally: observe, analyze, and respond to market conditions; collect information on prices, price changes, and supply levels; analyze/process that information; and create pricing models to inform pricing decisions.
>
> It is worth noting that there are many legitimate grounds for setting different prices for the same goods or services, such as dynamic pricing where prices fluctuate based on real-time demand, availability and market conditions (e.g., peak hours or bad weather can drive up

demand for rides); local demand or operational/regional costs; returning customers or those enrolled in loyalty programs may receive lower prices; or lower prices may get set to attract first time customers; online ticket prices may increase as the date of an event gets closer; inventory goes down; etc.). Restricting the ability of businesses to use this type of technology to help them in these same activities will greatly impair the ability of some businesses to understand market conditions and respond efficiently in changes to the competitive landscape, not to mention take away information that would otherwise guide pricing decision and lend to less competitive pricing overall.

REGISTERED SUPPORT / OPPOSITION:

Support

AIDS Healthcare Foundation
California Civil Liberties Advocacy
California Housing Partnership
California Rural Legal Assistance Foundation
California School Employees Association
Fremont for Everyone
Housing California
National Association of Social Workers, California Chapter
Oakland Privacy
Open Markets Institute
Private Equity Stakeholder Project
Sacramento Regional Coalition to End Homelessness

Opposition

American Property Casualty Insurance Association
Association of National Advertisers
Calbroadband
California Apartment Association
California Association of Realtors
California Chamber of Commerce
California Credit Union League
California Fuels and Convenience Alliance
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
Realpage, INC.
Software Information Industry Association
Technet

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