

Date of Hearing: August 20, 2025

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

SB 384 (Wahab) – As Amended July 17, 2025

Policy Committee:	Judiciary	Vote:	9 - 2
	Privacy and Consumer Protection		9 - 4

Urgency: No      State Mandated Local Program: No      Reimbursable: No

**SUMMARY:**

This bill prohibits the sale and use of specified algorithms that process nonpublic input data and are used to set the price or supply level of a good or service, or the rent or occupancy level of rental property.

Specifically, among other provisions, this bill:

- 1) Prohibits a person from selling, licensing, providing, or using a price-setting algorithm with the intent or reasonable expectation 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 price or supply level of a good or service, or a rent or occupancy level of rental property.
- 2) Provides an affirmative defense to liability for a user of a price-setting algorithm if the user demonstrates, by the preponderance of the evidence, that they exercised reasonable due diligence, as specified.
- 3) Authorizes enforcement by the Attorney General, a district attorney, a city attorney, or a county counsel, who may file a civil action for actual damages, injunctive relief, restitution, reasonable attorney's fees and costs, and civil penalties of up to \$1,000 per violation.
- 4) Defines a violation as follows:
  - a) For a person who sells, licenses, or provides a price-setting algorithm in violation of the bill, each authorized user of, or user under a license for, the algorithm is a separate violation.
  - b) For a person who uses a price-setting algorithm in violation of the bill, each calendar month of use is a separate violation.

**FISCAL EFFECT:**

- 1) Significant costs (Insurance Fund) to the Department of Insurance (CDI). CDI anticipates costs of \$196,000 in fiscal year (FY) 2025-26 and \$199,000 in FY 2026-27 for additional staffing to manage workload resulting from this bill. CDI explains that insurers are subject to multiple statutory exemptions from antitrust laws. For example, unlike other industries, insurers may act in concert with related insurers on rate setting, participate in certain joint

arrangements authorized by law or the insurance commissioner to assure availability of insurance, and share certain data. CDI reports this bill, if applied to insurers, will “upend existing law and industry practice” and “override” these existing antitrust exemptions for the insurance industry. As a result, insurance policies will be voided and insurers will need to file additional forms with CDI, which CDI must process.

- 2) **Costs (Unfair Competition Law Fund)** to the Department of Justice (DOJ) to bring enforcement actions as authorized by this bill. Actual costs will depend on the number of enforcement actions pursued by DOJ and the amount of additional work created by each action, but costs may be in the hundreds of thousands of dollars annually. DOJ anticipates costs of \$371,000 in fiscal year 2025-26 and \$650,000 ongoing annually thereafter for an additional attorney, analyst, and legal secretary in its Consumer Protection Section to handle this workload. DOJ reports it cannot implement the requirements of this bill without an appropriation of additional funds.
- 3) **Cost pressures (Trial Court Trust Fund, General Fund)** of an unknown but potentially significant amount to the courts to adjudicate civil actions authorized by this bill. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations.

#### COMMENTS:

- 1) **Background.** Coordinated price-fixing is an anticompetitive business practice prohibited by federal law and the Cartwright Act, California’s primary antitrust statute. The traditional conception of price-fixing involves direct communication by two business competitors who agree to increase their prices in the same market so they each make more money at the expense of consumers. Algorithmic price fixing refers to the use of software to set or recommend prices in ways that result in coordinated outcomes between competitors without any formal agreement. In the contemporary economy, many businesses use algorithms that process huge quantities of data and make recommendations about the prices a business should set. Depending on what data is processed by an algorithm, how many businesses are using the same algorithm in the same market, and other factors, these algorithmic tools can create the same result as coordinated price-fixing: businesses setting similarly high prices to the detriment of consumers. However, the business community reports that use of price-setting algorithms is ubiquitous and not inherently collusive.
- 2) **Related Legislation.** This bill is one of several this session that tries to define when use and distribution of price-setting algorithms becomes an anticompetitive practice tantamount to price-fixing. SB 295 (Hurtado) is similar in scope and approach to this bill: both bills prohibit the distribution and use of algorithms that process nonpublic data and are used by two or more competitors in the same market to set or recommend prices. Both bills cover roughly the same scope of goods or products, services, and rental property. Both bills include an affirmative defense to liability for an algorithm user who demonstrates they exercised due diligence before using the algorithm, including by obtaining assurances from the distributor that the algorithm does not process the kind of data prohibited by each bill.

Both bills authorize enforcement by public prosecutors, void contract terms that conflict with the bill's provisions, and state they do not limit the applicability of other antitrust laws.

However, there are some differences between the bills. For example, the bills authorize different civil penalties: the maximum penalty under SB 295 is \$25,000 per violation, while the maximum penalty under SB 384 is \$1,000 per violation. In addition to violations for use and distribution of specified algorithms, SB 295 makes it unlawful for a person to make a recommendation based on the use of a pricing algorithm that violates the bill's terms. SB 384 does not contain a parallel violation. The bills also use different definitions for the algorithms governed by each bill, and slightly different definitions of the type of data that renders use of an algorithm unlawful.

Other bills in this area include SB 52 (Perez), which prohibits specified uses of rental pricing algorithms that process nonpublic competitor data. SB 52 is pending in this committee. AB 325 (Aguiar-Curry) specifies that using or distributing a common pricing algorithm to further a price-fixing conspiracy is a violation of the Cartwright Act. AB 325 is pending on the Senate Appropriations Committee's suspense file.

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