Date of Hearing: July 16, 2025
Fiscal: Yes

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Rebecca Bauer-Kahan, Chair
SB 52 (Pérez) – As Amended July 8, 2025

SENATE VOTE: 28-9

PROPOSED AMENDMENTS

SUBJECT: Housing rental terms: algorithmic devices

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 295 (Hurtado), 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 295 and SB 384 apply to a broader array of categories, this bill focuses specifically on rental housing.

Specifically, the bill makes it unlawful for a person to provide a rental pricing algorithm that uses nonpublic competitor data, if the person intends for it to be used by two or more persons in the same or related market. The bill also makes it unlawful to use the rental pricing algorithm if they know or should know that the rental pricing algorithm has been used by two or more landlords in the same or related market, or if they coerce a person into adopting a recommended rental term, as specified. Finally, the bill makes it unlawful to set or adopt rental terms based on the recommendation of a rental pricing algorithm if the person knows or should know the algorithm processes nonpublic competitor data and the recommendation was used by another person to set or recommend a rental term in the same or related market. The bill is enforceable by public prosecutors and a private right of action.

Committee amendments, described in Comment #8, eliminate a duplicative provision, make minor changes to align the bill with its companion bills, and make other clarifying changes.

The bill is author-sponsored and supported by a broad coalition, including public interest and housing advocates. It is opposed by rental housing associations, among others.

The bill was previously heard by the Judiciary Committee, where it passed on a 9-3 vote.

THIS BILL:

1) Makes certain findings and declarations.

2) Makes the following unlawful for a person to:

   - Sell, license, or otherwise provide to two or more persons a rental pricing algorithm with the intent that it be used by two or more persons in the same market or a related market to set or recommend rental terms for residential premises.

   - Use a rental pricing algorithm if either 1) the person knows or should know that the rental pricing algorithm would be used to set rental terms for a residential premises by two or more landlords in the same market or a related market, or 2) the person coerces any other person to set or adopt a recommended rental term for a residential premises located in the same market or a related market.

   - Set or adopt rental terms based on the recommendation of a rental pricing algorithm if the person knows or should know that the rental pricing algorithm processes nonpublic competitor data to set rental terms and that the pricing algorithm or its recommendation was used by another person to set or recommend a rental term for a residential premises in the same market or a related market.

3) Provides that, with respect to the provision and use of a rental pricing algorithm in violation of the provisions described above, each month that a violation exists constitutes a separate and distinct violation. Each separate residential premises for which the rental pricing algorithm is provided or used in violation of the provisions described above additionally constitutes a separate and distinct violation.

4) Defines, among other terms:

   - "Rental pricing algorithm" as a service or product, commonly known as revenue management software, that uses one or more algorithms to perform calculations of nonpublic competitor data concerning local or statewide rental terms for the purpose of advising a landlord on setting or recommending rental terms for residential premises, except as provided.

   - "Nonpublic data" as information that is not widely available or easily accessible to the public.

   - "Nonpublic competitor data" as nonpublic data derived from two or more competitors, directly or indirectly, regarding information about actual rental amounts charged to a tenant, occupancy rates, and lease start and end dates that is obtained through nonpublic means. Excepts from this definition certain information, including data processed by the rental pricing algorithm collected more than one year before the use or distribution of the rental pricing algorithm.

5) Provides that public prosecutors may file a civil action for a violation of the bill for damages, injunctive relief, restitution, civil penalties of up to $1,000 per violation, and reasonable attorney's fees and costs.

6) Additionally provides that a person harmed by a violation of the bill may file a civil action for damages, injunctive relief, civil penalties of up to $1,000, and reasonable attorney's fees and costs. Provides that a lease provision that limits a tenant from recovering attorney's fees

or that caps the tenant's fee award is void as contrary to public policy in a tenant's claim against their landlord under the bill.

7) Provides that it does not limit the applicability of other antitrust laws and that the remedies and penalties under the bill are in addition to any others available under state law.

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:

> California has a rental housing affordability crisis. This state is the most expensive state to rent in, requiring an average hourly wage of $47.38 to afford a 2-bedroom apartment. More than half of the state's renters are rent-burdened as they have to contribute more than 30% of their income to rent. While the rental housing affordability crisis isn't new, exacerbating this crisis is how landlords are using tech to inflate rents above what is fair.
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> Real estate giants are harnessing algorithms to recommend rent prices based on rental data from thousands of landlords and other sources. These AI-backed rent-setting tools turn competitors into collaborators for a potentially already unlawful information sharing collusion operation that provides landlords with an unfair and unsustainable advantage. This is tech-powered exploitation and worsening the already dire affordability crisis.
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> Although federal and state law clearly sets precedent for illegal antitrust and anticompetitive practices, landlords continue to rely on algorithms like RealPage provides, arguing that their practices are not covered under those laws. As such, landlords continue to share and compile competitive data through this platform in order to set inflated rental prices in a manner eerily similar to examples of antitrust violations. Due to the sketchy nature of algorithmic utilization among landlord competitors, federal, state, and local government officials have begun taking action to address what has been depicted as "an unlawful information-sharing scheme.
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> SB 52 addresses the question of price-fixing in rental markets through third party algorithms by clearly defining in state law that using such methods is illegal. Further, SB 52 provides mechanisms for accountability and enforcement for using these algorithms illegally.

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

[1] *Copperweld Corp. v. Independence Tube Corp*. (1984) 467 U.S. 752, 767.

> 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]

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

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[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.
[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.

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]

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]

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[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.
[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.*

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' 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

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[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.
[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.

> 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 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 it the hotel ultimately charges a different price.[36]

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

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[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.
[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.

was exchanged, and the alleged co-conspirators were not bound to accept the algorithm's pricing recommendations.[37]

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 competitors to fix the *starting point* of pricing is per se unlawful, no matter what prices the competitors ultimately charge." [38]

6) **This bill seeks to prevent algorithmic collusion in the rental housing sector.** This bill targets rental pricing algorithms that rely on nonpublic competitor data and are used by multiple landlords in the same or related market to set or recommend rental terms. Specifically, the bill makes it unlawful for a person to:

- Sell, license, or otherwise provide to two or more persons a rental pricing algorithm with the intent that it be used by two or more persons in the same market or a related market to set or recommend rental terms for residential premises.

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[37] *Cornish-Adebiyi, et al. v. Caesars Entertainment, Inc., et al.*, No. 1:23-CV-02536-KMW-EAP (D. N.J. Sept. 30, 2024).

[38] "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.

- Use a rental pricing algorithm if either 1) the person knows or should know that the rental pricing algorithm would be used to set rental terms for a residential premises by two or more landlords in the same market or a related market, or 2) the person coerces any other person to set or adopt a recommended rental term for a residential premises located in the same market or a related market.

- Set or adopt rental terms based on the recommendation of a rental pricing algorithm if the person knows or should know that the rental pricing algorithm processes nonpublic competitor data to set rental terms and that the pricing algorithm or its recommendation was used by another person to set or recommend a rental term for a residential premises in the same market or a related market.

"Rental pricing algorithms" are those that use competitor data that is "nonpublic," defined as information not widely available or easily accessible to the public. Excluded from the definition of "nonpublic competitor data" are government-maintained rental registries, public advertisements, census data, and data more than one year old.

With respect to enforcement, public prosecutors and any person harmed by a violation of the bill may file civil actions against violators, and may seek standard remedies and a civil penalty of $1,000 per violation. For violations based on the use of the algorithm, each month in which the pricing algorithm is used constitutes a separate and distinct violation. For violations based on the distribution and use of the algorithm, each separate residential premises for which the algorithm is provided or used constitutes a separate and distinct violation. The bill expressly supplements existing anti-trust laws, such as the Cartwright Act.

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 rents.

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 52. Consider a real estate platform that provides rent estimates—like Zillow's Zestimate—based on publicly available data. The platform pulls rental listing prices, tax records, census information, and other public sources to generate estimated rental values for residential properties. It does not accept or process nonpublic lease data from property owners, such as actual rents charged to specific tenants, occupancy rates, or lease start and end dates. Nor does it distribute pricing recommendations to landlords or attempt to align their rental terms. Because the estimates are derived from public information and are intended to inform consumer-facing platforms or general market awareness—not to coordinate pricing among landlords—this conduct would not be covered by SB 52. As long as the algorithm relies solely on public, aggregated, or de-identified data, and is not used to facilitate shared pricing behavior among competitors, it falls outside the bill's prohibitions.
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> ***Hypothetical #2*** – Unlawful under SB 52. In contrast, consider a hypothetical where a third-party software vendor licenses a dynamic rent-pricing tool to multiple landlords operating in the same geographic market. The software collects confidential rental rates, occupancy figures, and leasing data from each participating landlord and uses that information to

generate pricing recommendations for all of them. The software is marketed as a way to "maximize market rents" and reduce undercutting. Because the algorithm accepts nonpublic input data from multiple competitors and is used with the intent to align pricing behavior in the same market, and because the vendor and clients either know or should know this, the conduct would fall squarely within the prohibitions of SB 52.[39]

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 295 (Hurtado, 2025) is similar to this bill but applies to products, services, and rental property more generally. The bill provides an affirmative defense if the person demonstrates by a preponderance of evidence that they exercised reasonable due diligence before using the recommendation of a pricing algorithm. A violation is subject to public prosecutor enforcement, which may include restitution, punitive damages, and a civil penalty of up to $25,000 per violation.

- SB 384 (Wahab, 2025) is similar SB 295, but applies to goods rather than products, and the civil penalty is capped at $1,000 per violation.

8) **Amendments.** The author has agreed to the following clean-up amendments, which eliminate duplicative provisions and bring the bill more in line with its companion bills, including by adding "reasonable expectation" as a basis for liability for distributors and limiting the bill's application to competitor markets. The amendments also include additional clarifying changes requested by California Apartment Association. Collectively, the amendments resolve some, but not all of their concerns.

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[39] Asm. Jud. Analysis AB 52, as amended June 26, 2025, at p. 10.

1947.16. (a) It is unlawful for any person to sell, license, or otherwise provide to two or more persons a rental pricing algorithm with the intent ***or reasonable expectation*** that it be used by two or more persons in the same market ~~or a related market~~ to set or recommend rental terms for residential premises.

~~(b) It is unlawful for any person to use a rental pricing algorithm for residential premises if either of the following applies:~~

~~(1) The person knows or should know that the rental pricing algorithm would be used to set rental terms for a residential premises by two or more landlords in the same market or a related market.~~

~~(2) The person coerces any other person to set or adopt a recommended rental terms for a residential premises located in the same market or a related market.~~

(***b***) It is unlawful for a person to set or adopt rental terms based on the recommendation of a rental pricing algorithm if the person knows or should know that the rental pricing algorithm processes nonpublic competitor data to set rental terms and that the pricing algorithm or the recommendation of the pricing algorithm was used by another person to set or recommend a rental term for a residential premises in the same market ~~or a related market~~.

(***c***) (1) For a person who uses a rental pricing algorithm in violation of this section, each month that a violation exists or continues shall constitute a separate and distinct violation.

(2) Each month that a person sells, licenses, or otherwise provides~~, or each month that a seller uses~~, the rental pricing algorithm in violation of this section shall constitute a separate and distinct violation.

(3) Each separate residential premises for which the rental pricing algorithm is sold, licensed, provided, or used in violation of this section shall constitute a separate and distinct violation.

(***d***) The following definitions apply for purposes of this section:

(1) "Antitrust laws" has the same meaning as defined in the Clayton Act (15 U.S.C. Sec. 12), and includes Section 45 of Title 15 of the United States Code, and ~~this part, including provisions in this section,~~ ***Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16600,*** commonly known as the Cartwright Act .

(2) (A) "Nonpublic competitor data" means nonpublic data derived from two or more competitors, directly or indirectly, regarding information about actual rental amounts charged to a tenant, occupancy rates, and lease start and end dates that is obtained through nonpublic means.

(B) "Nonpublic competitor data" does not include any of the following:

(i) Information regarding actual rent amounts charged to a tenant, occupancy rates, and lease start and end dates that are obtained from publicly accessible sources, including, but not limited to:

(I) Advertisements of available rental properties, including listings published on internet websites maintained by a property owner or manager ***or third party***.

(II) Rental registries maintained by a city, county, city and county, or state or federal agency.

(ii) Information obtained from public records subject to disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) or the federal Freedom of Information Act (5 U.S.C. Sec. 552).

(iii) Information obtained from the United States Census Bureau or State Census Data Center.

(iv) Aggregated information distributed, reported, or otherwise communicated in a way that is not reasonably linkable to a competitor, such as narrative industry reports, news reports, business commentaries, or generalized industry survey results, provided that such aggregated information is not derived from sources which may be considered nonpublic competitor data.

(v) Other forums, including internet websites, in which information about actual rent amounts charged to a tenant, occupancy rates, or lease start and end dates is equally accessible to tenants or prospective tenants and landlords.

(vi) Data processed by the rental pricing algorithm collected more than one year before the use or distribution of the rental pricing algorithm.

(3) "Nonpublic data" means information that is not widely available or easily accessible to the public.

(4) "Rental pricing algorithm" means a service or product, commonly known as revenue management software, that uses one or more algorithms to perform calculations of nonpublic competitor data concerning local ~~or statewide~~ rental terms for the purpose of advising a landlord on setting or recommending rental terms for residential premises.

(A) "Rental pricing algorithm" includes a product that incorporates a rental pricing algorithm.

(B) "Rental pricing algorithm" does not include either of the following:

(i) A report that publishes publicly available rental data in an aggregated manner but does not recommend rental rates or occupancy levels for future leases.

(ii) A product used for the purposes of establishing rent or income limits in accordance with the affordable housing program guidelines of a local, state, or federal program.

(5) "Rental term" means rental rate, lease term, or occupancy level.

(6) A parent entity and its wholly owned subsidiaries shall be considered one person.

(***e***) (1) The Attorney General, in the name of the people of the State of California, and the city attorney or county counsel in the jurisdiction in which the rental unit is located, in the name of the city or county, may file a civil action for a violation of this section for damages, injunctive relief, restitution, or civil penalties of up to one thousand dollars ($1,000) per violation, or any combination of those remedies. The court shall award reasonable attorney's fees and costs to the Attorney General, city attorney, or county counsel, as applicable, if they are the prevailing party in the action.

(2) A person who is harmed by a violation of this section may file a civil action for damages, injunctive relief, or civil penalties of up to one thousand dollars ($1,000) per violation, or any combination of those remedies. The court shall award reasonable attorney's fees and costs to the prevailing plaintiff in the action. A lease provision that limits a tenant from recovering attorney's fees or that caps the tenant's fee award shall be void as contrary to public policy in a tenant's claim against their landlord under this section.

(***f***) (1) Nothing in this section shall impair or limit the applicability of antitrust laws. The prohibitions described herein apply in addition to, and not in lieu of, any prohibitions described in applicable state or federal antitrust laws.

(2) The remedies and penalties provided by this section are cumulative to each other and the remedies or penalties available under all other laws of this state.

ARGUMENTS IN SUPPORT: Power CA Action writes:

California consistently has one of the largest renter populations of any state, with millions of households burdened by spending more than a third of their incomes on rent. Now, tech has come in to supercharge the affordability crisis. The emergence of rental pricing algorithms has turned competitors into collaborators by assessing collective price data to find the highest rate–and directing its landlord users to adopt it. Ongoing lawsuits allege that 80-90% of users implement AI-backed, profit-maximizing recommendations.

Conservative estimates from the Council of Economic Advisors found that these algorithms added $3.8 billion in costs for American renters in 2023 alone. Continued reliance on rental pricing algorithms will further distort California's housing market and exacerbate the state's housing crisis. SB 52 addresses this issue by clarifying that technology cannot be used to circumvent existing antitrust laws on the backs of already-burdened renter households.

In order to stop illegal activity that is driving up rents, SB 52 will prohibit the sale, license, and use of algorithms to set housing rental rates or other commercial terms. Specifically, SB 52 makes it illegal to provide algorithms with the intent that they be used by two or more landlords to set rental terms, and illegal to use them if the person knew or should have known that someone else was using the same algorithm to set rental terms. It also creates a civil right of action for attorneys and those harmed.

ARGUMENTS IN OPPOSITION: The California Apartment Association writes:

CAA appreciates the significant progress that has been made on SB 52, as reflected in the June 26, 2025, amendments. However, these amendments do not sufficiently address CAA's concerns because:

- **The bill holds users of rental pricing algorithms liable** simply because they should have known that another person uses the same product – a standard that would always be met for a commercially available product – even if the user did not know, and had no reason to know, that the rental pricing algorithm ran afoul of the law. This holds landlords to a much higher standard than users of other pricing algorithms under existing law and as proposed to be regulated under AB 325. Further, the liability standards in subdivisions (b) and (c) conflict, thereby creating confusion about the applicable standard.

- **The definition of nonpublic competitor data remains too narrow** for two key reasons. First, it fails to exclude internet listing services. Second, the exclusion of aggregated data applies only to the extent that it is derived from sources that themselves are not nonpublic competitor data – thereby making the exclusion largely meaningless.

- **The way penalties are determined is excessive**, as it makes each month in which a rental pricing algorithm is used and for each premises for which it is used to be considered a separate violation. This means that a single decision by a landlord to use an algorithm will result in numerous violations, each of which carries a separate penalty. This is particularly concerning given the low standard of liability.

CAA argues the bill should be rewritten to accord with established concepts from antitrust laws, including incorporating the term "independent centers of decisionmaking" from case law, as described above. CAA writes:

> In an effort to seek a good faith compromise that addresses the concerns raised by the sponsors, CAA has proposed an alternative framework that would do the following:
>
> - Provide that it is unlawful for any person to facilitate an agreement among landlords that restricts competition with respect to rental housing through the sale, license, or other provisions of a rental pricing algorithm if the person knows or should know that the rental pricing algorithm deprives landlords of "independent centers of decision making" with respect to setting rental terms.
>
> - Clearly define the factors a court would use to determine whether "independent centers of decision making" are preserved, which would include, but not be limited to, consideration of whether nonpublic competitor data is used.
>
> - Remove liability based solely on the use of a rental pricing algorithm, while still allowing the enforcement of existing antitrust laws.

REGISTERED SUPPORT / OPPOSITION:

Support

Aapis for Civic Empowerment
AARP
Aids Healthcare Foundation
American Economic Liberties Project

Basta, INC.
California Center for Movement Legal Services
California Community Land Trust Network
California Green New Deal Coalition
California Housing Partnership
California Rural Legal Assistance Foundation
California School Employees Association
Center for Community Action and Environmental Justice (CCAEJ)
Cft- a Union of Educators & Classified Professionals, Aft, Afl-cio
City of Santa Monica
Consumer Federation of California
County of Los Angeles Board of Supervisors
Disability Rights California
Disability Rights Education and Defense Fund
East Bay Housing Organizations
Economic Security California Action
Evolve California
Housing and Economic Rights Advocates
Housing California
Housing Now!
Human Impact Partners
Inner City Law Center
Kapor Center
Oakland Privacy
Pico California
Power California Action
Powerca Action
Private Equity Stakeholder Project
San Diego; County of
Santa Monica Rent Control Board
The Big Tent San Leandro
Udw/afscme Local 3930
Unite Here Local 11
Urban Habitat

Oppose

Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, California Southern Cities
Berkeley Property Owner's Association
California Rental Housing Association
East Bay Rental Housing Association
Nor Cal Rental Property Association
North Valley Property Owners Association
San Diego Regional Chamber of Commerce
Santa Barbara Rental Property Association
Southern California Rental Housing Association

Oppose Unless Amended

California Apartment Association
Realpage, INC.

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