

Date of Hearing: July 15, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

REVISED

SB 763 (Hurtado) – As Amended May 23, 2025

SUMMARY: Increases existing criminal penalties for a violation of the Cartwright Act and imposes an additional \$1 million civil penalty for a violation of the Act. Specifically, **this bill:**

- 1) Increases the criminal penalties for a violation of the Cartwright Act, as follows:
 - a) If the violator is a corporation, the maximum fine is increased from \$1 million to \$6 million, or twice the pecuniary gain or loss caused by the violation, whichever is greater; or,
 - b) If the violator is an individual, the maximum term of imprisonment is increased to two, three, or five years and the maximum fine is increased from \$250,000 to \$1 million, or twice the pecuniary gain or loss caused by the violation, which is greater.
- 2) Requires, in an action initiated and prosecuted by the Attorney General, all moneys received by any court in payment for a fine or civil penalty imposed pursuant to a violation of the Cartwright Act to be deposited in the Department of Justice (DOJ) antitrust account within the General Fund of the State Treasury.
- 3) Requires that a civil penalty of not more than \$1 million be assessed and recovered in any civil action brought by DOJ or district attorney against any person, corporation, or business entity for a violation of the Cartwright Act. Provides a non-exclusive list of relevant circumstances that must be considered by a court or jury in assessing the amount of the civil penalty.
- 4) Provides that the civil penalty collected shall accrue only to the State of California or the county treasurer of the county in which the court is situated, and all proceeds shall be deposited in the DOJ antitrust account of the General Fund (in an action brought by DOJ) or to the county (in an action brought by a district attorney).
- 5) Provides that, unless otherwise expressly provided by law, the remedies or penalties provided within the Cartwright Act are cumulative to each other and to the remedies or penalties available under other state law.

EXISTING FEDERAL LAW:

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

EXISTING LAW:

- 1) Establishes the Cartwright Act. (Bus. & Prof. Code, §§ 16700 et seq.)
- 2) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)
- 3) Provides that any contract or agreement in violation of the Cartwright Act is absolutely void and not enforceable. (Bus. & Prof. Code, § 16722.)
- 4) Authorizes the Attorney General, or the district attorney of any county, subject to specified notice requirements, to initiate a civil action or criminal proceeding for a violation of the Cartwright Act. (Bus. & Prof. Code, § 16754.)
- 5) Provides that a violation of the Cartwright Act is a conspiracy against trade, and that a person who engages in any such conspiracy or takes part therein, or aids or advises in its commission, or who as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carries out any of the stipulations, purposes, prices, rates, or furnishes any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, is punishable, as follows:
 - a) If the violator is a corporation, by whichever is greater:
 - i) A fine of not more than \$1 million; or,
 - ii) Not more than twice the amount of any pecuniary gain derived from or pecuniary loss resulting from a violation of the Act;
 - b) If the violator is an individual, by:
 - i) Imprisonment in the county jail for one year, two years, or three years, or by imprisonment in the county jail for not more than one year;
 - ii) A fine of not more than the greater of \$250,000 or not more than twice the amount of any pecuniary gain derived from or pecuniary loss resulting from a violation of the Act; or,
 - iii) By both fine and imprisonment. (Bus. & Prof. Code, § 16755, subd. (a).)
- 6) Allows a criminal action pursuant to this section to be commenced within four years after the commission of the last act comprising a part of any violation. No cause of action barred under existing law on the effective date of the amendment of this section at the 1977–78

Regular Session of the Legislature shall be revived by such amendment. (Bus. & Prof. Code, § 16755, subd. (b).)

- 7) Provides that all moneys received by a court in payment of any fine or civil penalty imposed must be paid to the State Treasury, if the Attorney General initiated and prosecuted the action; or to the treasurer of the county in which the prosecution is conducted, if the district attorney initiated and prosecuted the action. In an action that was prosecuted jointly by the Attorney General and a district attorney, the amounts shall be paid in the proportion agreed upon by the prosecuting entities. (Bus. & Prof. Code, § 16755, subd. (c).)
- 8) Authorizes any person who is injured in their business or property by reason of anything forbidden under the Cartwright Act, regardless of whether the injured person dealt directly or indirectly with the defendant, to file a civil action to recover treble damages, interest, and injunctive relief. The Attorney General or a district attorney may file a suit for damages on behalf of a state or county political subdivision. (Bus. & Prof. Code, § 16750.)
- 9) Authorizes the Attorney General to file a civil action in the name of the people of the State of California, as *parens patriae* on behalf of natural persons residing in the state, for a violation of the Cartwright Act, to secure monetary relief in the form of treble damages sustained by those natural persons, interest, costs, and reasonable attorney fees. (Bus. & Prof. Code, § 16760.)
- 10) Defines “person” within the Cartwright Act to include corporations, firms, partnerships, and associations. (Bus. & Prof. Code, § 16702.)
- 11) 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; or,
- 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. (Bus. & Prof. Code, § 16720.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “SB 763 is a crucial step toward modernizing and strengthening the penalties under California's Cartwright Act to effectively deter anti-competitive practices that harm consumers, small businesses, and our overall economy. Over the past two decades, we’ve witnessed an alarming concentration of market power, with monopolies and oligopolies dominating entire industries. When corporations manipulate markets, inflate prices, and eliminate competition, they drive up costs for working families already struggling to afford necessities like rent, food, and energy.

“These corporate giants use mergers, acquisitions, and strategic barriers to crush competition, leaving consumers with fewer choices and higher prices. Despite this growing threat, California’s penalties for anti-competitive behavior remain woefully outdated—corporate fines that once seemed substantial are now little more than the cost of doing business.

“SB 763 addresses this imbalance by increasing the maximum penalty for corporate violators to \$6 million and for individuals to \$1 million, with the possibility of up to 5 years in prison. This ensures that our penalties more effectively deter corporations from interfering with trade, fixing prices, and reducing competition – actions that can raise prices and harm workers, businesses, and consumers. By strengthening these enforcement tools, we send a clear message: California will not allow powerful corporations to rig the system at the expense of working people.”

- 2) **Effect of the Bill:** This bill would increase incarceration and financial penalties for individual and corporate violators of the Cartwright Act, which is a law designed to protect consumers and discourage anti-competitive business practices. (*Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 935.) Currently, the maximum fine for corporations determined to have restrained trade in violation of the Cartwright Act is capped at the greater of \$1 million or two times the amount of pecuniary gain or loss. (Bus. & Prof. Code, § 16755, subd. (a).) Individual violators face a maximum fine of the greater of \$250,000 or two times the amount of pecuniary gain or loss. (Bus. & Prof. Code, § 16755, subd. (a).)

The \$1 million fine for a corporate violator was added in 1975 and has not been increased since. (See Stats. 1975, Ch. 386, § 1.) The fine for an individual violator was raised from \$100,000 to \$250,000 in 1990. (See SB 2576 (Kopp), Ch. 486, Stats. 1990). In the same year, the alternative fine of double the violator’s pecuniary gain or loss caused by the violation was added for both individual and corporate defendants. (Ibid.)

This bill establishes criminal fines contained in state-level antitrust laws by raising the alternative maximum for corporations to \$6 million and for individual violators to \$1 million. Additionally, under the Cartwright Act, individual violators may be punished by imprisonment in the county jail for one, two, or three years. (Pen. Code, § 16755, subd. (a).) This bill increases punishment for individual violators of the Cartwright Act to two, three, or five years, by up to one year in county jail, or by both fine and imprisonment. This bill also provides that, unless otherwise expressly provided by law, the remedies or penalties provided within the Cartwright Act are cumulative to each other and to the remedies or penalties available under other state law.

It is unclear whether increasing penalties has a deterrent effect. There is reliable evidence showing increased penalties generally fails to deter criminal behavior.¹ Data shows greater deterrent effects as the likelihood of being caught increases and the perception rises that one will be caught.² In contrast, the act of punishment and the length of punishment largely do not increase deterrence.³ Given the data on confinement and deterrence,⁴ it is debatable whether new criminal penalties on violators of our antitrust laws will discourage anticompetitive behavior.

This bill additionally increases financial penalties for individual and corporate violators. Criminal fines rapidly balloon into unpayable amounts for most of the population, which create downstream economic consequences for impacted individuals and society. Unsurprisingly, the judicial branch reported that \$8.6 billion in fines and fees remained unpaid at the end of 2019-20.⁵ With evidence also showing that rising criminal fines increases felony recidivism,⁶ deterrent effects from this bill are uncertain. It is likewise unclear whether greater deterrence and reduced recidivism can be realized from corporate violators of these laws.

- 3) **The Cartwright Act:** This bill would update part of California’s antitrust statutory scheme. California’s main antitrust statute is the Cartwright Act, which closely parallels its federal counterpart – Section 1 of the Sherman Act (15 U.S.C. § 1). This part of the Sherman Act prohibits contracts, combinations, and conspiracies in restraint of trade. (See *ibid.*) Like its federal counterpart, the Cartwright Act is designed to aid the consumer by preserving and promoting competition in commercial markets by encouraging interaction among competitors to produce the best allocation of economic resources, including lower priced and higher quality goods. (*Cianci v. Superior Court* (1985) 40 Cal. 3d 903, 918-19.) California courts have construed the Cartwright Act as “broader in range and deeper in reach than the Sherman Act.” (*Id.* at 920.) Cartwright Act proscribes even indirect or subtle forms of

¹ *Five Things About Deterrence* (May 2016) National Institute of Justice
<<https://www.ojp.gov/pdffiles1/nij/247350.pdf>> [as of July 9, 2025].

² *Ibid.*

³ *Ibid.*

⁴ See *infra*, at note 6.

⁵ *Overview of Criminal Fine and Fee System* (May 13, 2021) Legislative Analyst’s Office
<<https://lao.ca.gov/Publications/Detail/4427>> [as of July 9, 2025].

⁶ Giles, *The Government Revenue, Recidivism, and Financial Health Effects of Criminal Fines and Fees* (Sept. 9, 2023) Wellesley College <<http://dx.doi.org/10.2139/ssrn.4568724>> [as of July 9, 2025] (showing that the increase in fines levied for criminal punishment increased the likelihood of felony recidivism, especially among Black defendants).

coordinated behavior that may affect market prices or restrict trade. (See Bus. & Prof. Code, § 16720 et seq.)

This area of California law 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.” (Bus. & Prof. Code, § 16720, subd. (e)(4).) 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, and is an essential element of any antitrust claim under both the Cartwright Act and the Sherman Act. (See *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 928 (Cartwright Act requires concerted action); see also *Texaco, Inc. v. Dagher* (2006) 547 U.S. 1, 5 (federal antitrust law also requires concerted action).)

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.) Courts evaluate this through either the *per se* rule or the rule of reason. (*Palsson*, supra, at p. 930.) Certain types of restraints are deemed *per se* unlawful, like group boycotts, because they are presumed to always harm competition. (*Ibid.*) 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. (*Id.* at pp. 934-35.)

- 4) **Argument in Support:** According to the *California Department of Justice*, “Currently, powerful corporations view antitrust enforcement as just another cost of doing business. SB 763 would increase criminal penalties and add civil penalties for violations of California’s Cartwright Act.

“Antitrust violations can lead to rising costs for consumers because when companies collude or gain significant market power through illegal anticompetitive practices, they have less pressure to keep prices low and can raise prices without fear of losing customers to other competitors. Competitive marketplaces established through antitrust vigilance help consumers by ensuring fair prices for goods and services, an array of products to choose from, quality goods and services, and the steady introduction of innovative new products.

“California’s Cartwright Act prohibits agreements between corporations to restrain trade, limit production, and fix prices or otherwise prevent competition. SB 763 is needed because the existing penalties for criminal violations of the Cartwright Act have not been updated for decades and are insufficient to deter antitrust violations in the current market.

“Given their vast resources, corporations and individuals currently view the existing criminal fines as a minor cost of doing business, leading to repeated antitrust violations. Without stronger financial and personal penalties, there is no meaningful disincentive for committing illegal practices like price-fixing, as the costs of violating the antitrust laws will be outweighed by the potential financial gains. The resulting antitrust abuses systemically undermine fair competition, which negatively impacts workers, business, and consumers.

“Accordingly, SB 763 would impose a maximum criminal fine of up to \$6 million against corporations—the first time that this amount has been increased since the current \$1 million

fine was initially established in 1975. SB 763 would also impose a maximum criminal fine of up to \$1 million for individuals—the first such increase since the current fine of \$250,000 was enacted in 1990. (SB 2576 (Kopp), Ch. 486, Stats. 1990.)

“In addition, the bill would add civil penalties of up to \$1 million per violation that courts can impose based on factors such as the nature, seriousness, and persistence of the misconduct. In adding civil penalties to the Cartwright Act, SB 763 would join California with 44 other states that already provide such remedies under their state antitrust laws. Of the 44 states that already authorize civil penalties, 40 of them impose a higher civil penalty than the \$2,500 per violation that is recoverable in California, indirectly, through enforcement of the Unfair Competition Law.”

- 5) **Argument in Opposition:** According to the *California Apartment Association*, “On behalf of the members of the California Apartment Association (CAA), I am writing to express CAA’s continued strong opposition to SB 763, your bill that proposes to significantly increase penalties under California’s antitrust law, the Cartwright Act.

“SB 763 would raise corporate penalties from \$1 million to \$6 million, or twice the gain or loss caused by the violation, whichever is greater. If the violator is an individual, it would impose a term of imprisonment to two, three, or five years; and the maximum fine would be increased from a maximum of \$250,000 to a maximum of \$1 million, or twice the gain or loss caused by the violation, whichever is greater. These penalties are severe when added to the imposition of an extra civil penalty of up to \$1 million in any civil action brought by the Attorney General or a district attorney against any person, corporation, or business entity found in violation of the Cartwright Act.

“We are unaware of any precedent in which the State has sought to arbitrarily impose such a sweeping and disproportionate increase in penalties. This move seems to imply the existence of widespread antitrust violations occurring without consequence. Current penalties under the Cartwright Act are already substantial. They include treble damages, attorneys’ fees and costs for prevailing parties, injunctive relief in civil cases, and criminal sanctions such as imprisonment and significant fines. Additionally, the Act already contains an alternative sentencing provision that allows the State to seek fines beyond the statutory maximum—up to twice the gross financial gain or loss resulting from the unlawful conduct. These measures ensure that penalties are severe enough to deter corporate misconduct and prevent companies from viewing fines as merely a cost of doing business. Given these existing enforcement tools and their proven deterrent effect, we believe SB 763’s extreme increases in penalties are unnecessary and unjustified. For these reasons, the California Apartment Association must respectfully oppose SB 763.”

6) **Related Legislation:**

- a) AB 325 (Aguiar-Curry) would instead provide that in a complaint for any violation of the Cartwright Act, it is sufficient to contain factual allegations demonstrating that the existence of a contract, combination in the form of a trust, or conspiracy to restrain trade or commerce is plausible. The bill would provide that a complaint for any violation of the Cartwright Act is not required to allege facts tending to exclude the possibility of independent action. This bill is pending hearing in the Senate Appropriations Committee.

- b) AB 1345 (Bauer-Kahan) would provide that is unlawful for one or more persons to act, cause, take, or direct a measure, action, or event that is either in restraint of trade, as specified, or to monopolize or monopsonize, as specified. AB 1345 was referred to, but never heard in the Assembly Judiciary Committee.

7) Prior Legislation:

- a) SB 697 (Hurtado), of the 2023-24 Legislative Session, would have increased criminal penalties for violations of the Cartwright Act. This bill was held in the Assembly Appropriations Committee.
- b) AB 1199 (Gipson), of the 2021-22 Legislative Session, would have required a qualified entity, as defined, that owns qualified property, as defined, to report annually to the Secretary of State specified information regarding the qualified property owned by the qualified entity. This bill was held in the Assembly Revenue & Tax Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Economic Liberties Project
California Department of Justice
California Federation of Labor Unions, Afl-cio
California State Council of Service Employees International Union (seiu California)
Economic Security California Action
Health Access California
Techequity Action
Udw/afscme Local 3930
Writers Guild of America West

Oppose

American Property Casualty Insurance Association
Associated Builders and Contractors of California
Brea Chamber of Commerce
Calbroadband
California Apartment Association
California Apartment Association
California Building Industry Association (CBIA)
California Business Properties Association
California Chamber of Commerce
California Grocers Association
California Hospital Association
California Restaurant Association
California Retailers Association
Carlsbad Chamber of Commerce
Civil Justice Association of California (CJAC)

Council of Business and Industries
Council of Industries
CTIA
Family Business Association of California
Greater Conejo Valley Chamber of Commerce
Insights Association
National Association of Mutual Insurance Companies
Oceanside Chamber of Commerce
Personal Insurance Federation of California
Software Information Industry Association
Technet
United Hospital Association

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