SENATE THIRD READING
SB 763 (Hurtado)
As Amended September 2, 2025
Majority vote

SUMMARY

Permits public prosecutors to seek up to $1 million in civil penalties for a violation of the Cartwright Act, and increases the cap on criminal penalties for a corporation from $1 million to $6 million.

Major Provisions

1) Increases the existing criminal penalties for a violation of the Cartwright Act, as follows:

   a) If the violator is a corporation, the maximum fine is increased from a maximum of $1 million to a maximum of $6 million, or twice the gain or loss caused by the violation, whichever is greater.

   b) If the violator is an individual, the maximum fine is 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.

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 Attorney General antitrust account within the General Fund of the State Treasury.

3) Provides that a civil penalty of not more than $1 million shall be assessed and recovered in any civil action brought by the Attorney General or district attorney against any person, corporation, or business entity for a violation of the Cartwright Act.

4) Requires a court or jury, in assessing the amount of a civil penalty under 3), to consider any relevant circumstances presented by the parties to the case, including, but not limited to:

   a) The nature and seriousness of the misconduct.

   b) The number of violations committed by the defendant.

   c) The persistence of the defendant's misconduct.

   d) The length of time over which the defendant's misconduct occurred.

   e) The willfulness of the defendant's misconduct.

   f) The defendant's assets, liabilities, and net worth.

   g) The extent to which the defendant cooperated in the Attorney General's or district attorney's investigation and litigation.

5) Provides that the civil penalty described in 3) shall be recovered only in a civil action brought by the Attorney General or a district attorney, or by any of their attorneys designated by them for that purpose, against any party that violates the Cartwright Act.

6) Provides that a penalty collected pursuant to 3) 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 Attorney General antitrust account of the General Fund (in an action brought by the Attorney General) or to the county (in an action brought by a district attorney).

7) 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.

COMMENTS

The Cartwright Act (Business and Professions Code (B&P) Section 16700 *et seq*.) is California's principal antitrust statute, modeled in part on the federal Sherman Act (15 U.S.C. Section 1 *et seq*.). It prohibits combinations, agreements, and conspiracies that restrain trade, including price fixing, bid rigging, output restrictions, and market allocation. The statute authorizes both public and private enforcement, and permits recovery of treble damages, injunctive relief, and attorney's fees.

Until recently, Cartwright Act enforcement in California has overwhelmingly occurred through civil litigation, with criminal enforcement functionally dormant for decades. Under current law, the California Attorney General, district attorneys, and city attorneys in large cities may bring civil enforcement actions seeking injunctive relief and restitution. Private plaintiffs may also sue for damages and injunctive relief under B&P Section 16750. However, public prosecutors have lacked the ability to seek civil penalties, a limitation that SB 763 proposes to address.

The Cartwright Act, enacted in 1907, is California's primary antitrust statute and predates the modern federal Clayton Act by several years. The law was enacted in response to concerns over the growing power of corporate trusts and monopolistic behavior in California's contemporary industries. (Landry, J., et al., The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California, *One Hundred Years in the Making: The Cartwright Act in Broad* Outline, Vol. 17, No. 2, Fall 2008.) It broadly prohibits agreements that restrain trade or result in price fixing, bid rigging, output restrictions, or monopolistic behavior. Though structurally similar to Section 1 of the Sherman Act (15 U.S.C. Section 1), the Cartwright Act contains broader language and does not require a showing of interstate commerce.

The Cartwright Act prohibits "[e]very trust" and defines "trust" to include any "combination of capital, skill or acts by two or more persons" for the purposes of restraining trade or fixing prices (B&P Section 16720). It also prohibits attempts and conspiracies to form such combinations (B&P Section 16726). The Act permits treble damages, injunctive relief, and attorneys' fees for private plaintiffs and authorizes public enforcement by the Attorney General, district attorneys, and certain city attorneys.

California courts have interpreted the Cartwright Act as analogous but not identical to the Sherman Act. In *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, the California Supreme Court expressly held that federal antitrust law is persuasive but not controlling in interpreting the Cartwright Act. The Court emphasized that the Act "must be

construed liberally in favor of protecting competition," and that it does not require proof of an interstate effect. B&P Section 16750(a) provides that "any person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter… may sue… and shall recover three times the damages sustained." This provision mirrors Section 4 of the Clayton Act (15 U.S.C. Section 15) and has led to robust private enforcement, particularly in consumer price-fixing and bid-rigging cases.

Public civil enforcement. The Attorney General's Antitrust Section has participated in multistate actions and led state-specific cases, but often has done so in collaboration with federal agencies, such as the U.S. Department of Justice or the Federal Trade Commission. Public enforcement by the California Attorney General has traditionally been selective, and largely limited by resources and the absence of civil penalty authority. Currently, state law authorizes the California Attorney General and county district attorneys to initiate civil actions for violations of the Cartwright Act and to seek an injunction, money damages on behalf of the state and its agencies, or as *parens patriae* on behalf of residents to secure monetary relief. (B&P Section 16750(c), (g), 16754, 16754.5, 16760.) Though penalties can be assessed through California's Unfair Competition Law with Cartwright Act violations as the predicate "unfair competition" violations, those are capped at $2,500 per violation. (B&P Section 17206(a).) The UCL does not define "a violation" for purposes of assessing these civil penalties; rather, it is left to the courts "to determine appropriate penalties on a case-by-case basis." (*People v. JTH Tax, Inc.* (2013) 212 Cal. App. 4th 1219, 1250 (citing cases).) In that respect, a violation is not the same as the cause of action. (*Id.* at 1250-51.) Courts have imposed a per-victim method and also a per-act per-victim method, which have resulted in the application of a multiple of tens of thousands for purposes of assessing civil penalties for a UCL violation. (*See, e.g.,* (2002) *People v. Fremont Life Insurance Co.* (104 Cal. App. 508, 513, 530) (finding over 9,000 violations of sections 17200 and 17536).)

Criminal enforcement. While the Cartwright Act has always included criminal penalties (B&P Section 16755), prosecutions have been virtually nonexistent in modern history. There had been no publicly reported criminal prosecutions under the Cartwright Act in over 25 years, and state prosecutors often refer such matters to the U.S. DOJ Antitrust Division. Once the federal government enters into a plea agreement, successfully prosecutes, or receives an acquittal on a criminal antitrust case, a state public enforcer may be precluded from pursuing a criminal prosecution under state law. (Penal Code Section 656.) However, the statute does not preclude state enforcers from bringing civil actions. (*See, e.g., People v. Gonzalez*, 241 Cal. App. 4th 1103.) The limitation of criminal charges for actions already prosecuted under federal law might help explain the dormancy of state criminal prosecution. A much more likely explanation is simply that the juice is not worth the squeeze. Investigating and prosecuting heavily fact-specific antitrust cases are notoriously time-consuming and costly, and the Cartwright Act caps criminal penalties at $1 million—a figure that has remained unchanged since 1975. Adjusting for inflation, $1 million in 1975 is approximately $6.1 million in today's dollars. (U.S. Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm.)

Modern revival in criminal and civil enforcement. In the second half of the 20th century, antitrust litigation was relatively uncommon, particularly by the United States Department of Justice. The Senate Judiciary's analysis of this bill lays out the transformational change in the U.S. economy over the past century, most acutely, the income disparity and concentration of corporate power. (Senate Judiciary Committee Analysis of SB 763, at p. 7.) In response to this transformation, federal and state prosecutors have increased their antitrust litigation. Much of the prosecutors' ire has been directed at large tech companies, including lawsuits against tech

mammoths such as Google, Amazon, and Meta. Additional antitrust litigation has been more targeted at niche players, accused of algorithmic price-fixing in violation of antitrust law. These lawsuits were all initiated under the Biden administration, and it remains unclear whether the Trump administration will continue in this approach. To date, those cases remain pending. The uncertainty about continued federal enforcement efforts are no doubt front of mind for California's own antitrust regulators. Even before the change in federal administration, California Department of Justice (DOJ) announced in March 2024 its intent to revive criminal prosecutions under the Cartwright Act, signaling a significant policy shift. California's Antitrust Chief Paula Blizzard indicated the DOJ's intent to bring criminal charges under state law, particularly against horizontal collusion that would also be prosecutable under the Sherman Act. This reflects a new willingness by state authorities to bring parallel or independent criminal prosecutions, which could prove especially important in the event of federal abdication.

This bill, as introduced, was much more ambitious. The criminal penalties were proposed to increase from $1 million to $100 million, reflecting not only inflation, but also market realities—including increases in corporate profits and market concentration. The originally-proposed $100 million penalty mirrored the criminal penalty under the Sherman Act. (15 U.S.C. Sections 1-3.) The bill in print caps criminal penalties at $6 million against corporations and imposes 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), Chap. 486, Stats. 1990). SB 763 also authorizes public prosecutors to seek civil penalties of up to $1 million per violation. Courts or juries must consider a list of aggravating and mitigating factors, including willfulness, duration of misconduct, the number of violations, persistence, defendant's cooperation, and financial condition. These factors closely mirror the factors considered when assessing amount of penalties under both the Unfair Competition Law (B&P Section 17206) and the False Advertising Law (B&P Section 17535.5).

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. 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.

Arguments in Support

Attorney General Rob Bonta, this bill's sponsor, explains the need for this measure:

> 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.
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> 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.

Health Access California, the statewide health care consumer advocacy coalition for quality and affordable health care, explains its support:

> The Cartwright Act is an important law to protect consumers from anti-competitive behavior that drives up prices. In healthcare, Sutter Health was in a 14-year class action with union trusts and the Attorney General for violations of the Cartwright Act for engaging in anti-competitive contracting practices that drove up the cost of health care in Northern California. For example, in Southern California, hospital inpatient procedures cost $132,000, compared to more than $223,000 in Northern California. A 2016 study showed that Sacramento (where Sutter is based) cost to deliver a baby was $27,000, nearly double the cost for the same service in Los Angeles or New York; making Sacramento one of the most expensive places to deliver a baby. The legal battle resulted in Sutter settling for $575 in compensation, prohibitions on anti-competitive conduct and requirements for Sutter to restore competition in California's health care markets.
>
> California's Cartwright Act penalty amounts have not been updated in decades, leaving the state without meaningful deterrents for industry against engaging in anti-competitive behavior that harms consumers. These amounts cannot be a cost of doing business for industry. The Sutter case is a critical example of why the Attorney General's office needs updated enforcement authority to protect Californians' health care from players in the health care system driving up the cost when Californians are already facing an affordability crisis. While that case was a win for consumers, that case took over a decade, while prices increased, harming consumers' access to care and financial stability. With increased enforcement, corporations in health care and other industries will think twice before engaging in anti-competitive behavior.

Arguments in Opposition
The opposition coalition, led by the California Chamber of Commerce removed their "Cost Driver" tag for this bill as a result of the amendments to reduce the maximum corporate penalties from $100 million to $6 million. They nevertheless continue to oppose this measure:

As a general matter, statutory reforms are appropriate when there is a demonstrable need for reform. Similarly, antitrust policy is most likely to benefit competition and consumers when it is supported by sound economic analysis. As we have noted in our comments to the California Law Revision Commission, which is actively in the process of considering an expansion of California's Cartwright Act following ACR 95 (Cunningham and Wicks, Chapter 147, Statutes of 2022), there has been no demonstration of any need to revise California's antitrust laws. Indeed, we have seen no showing that Californians are suffering from higher prices, inferior products or services, or less competition under the current California antitrust regime.

Additionally, the California Supreme Court has opined that the State's antitrust law is "broader in range and deeper in reach" than the Sherman Act. (See In re Cipro cases I and II (2015) 61 Cal.4th 116, 160.) In other words, the Cartwright Act arguably applies to conduct that extends beyond the scope of the Sherman Act. As a result, the penalties under state law cannot be directly equated to those under federal law, as the Sherman Act does not necessarily encompass all of the business activities regulated by the Cartwright Act. It simply is not an apples-to-apples comparison.

Nonetheless, existing penalties for violating the Cartwright Act – which include treble damages, attorney's fees and costs for prevailing parties, and injunctive relief in civil matters, as well as imprisonment and hefty fines in criminal matters – are significant. Moreover, the Cartwright Act already contains an alternative sentencing provision that allows the State to seek corporate fines in excess of the statutory maximum and up to two times the gross financial gain or financial loss caused by the unlawful conduct. The Cartwright Act's existing penalties are simply better aligned with the broader scope of the law and give State enforcers the flexibility needed to tailor penalties to the particular offenses proven.

To now pair exceedingly high penalties of the Sherman Act with the broader scope of the Cartwright Act, while also adding new statutory penalties (i.e., the proposed $1,000,000 civil penalty that would be assessed in a civil action brought by the AG or district attorney), would go beyond punishing bad actors and deterring unlawful conduct. It would harm businesses and California's economy, and burden consumers. The prospect of increased financial penalties could incentivize the filing of meritless or weak claims. And in all but the most baseless of cases, the looming threat of excessive liability will pressure and virtually guarantee that risk averse defendants will settle – not based on guilt, but simply to avoid the risks of litigation.

Penalties serve several different functions: they are designed to deter unlawful conduct, but are also designed to punish wrongdoers and compensate victims. It is bad policy to disrupt the balance of these aims with massive increases in penalties without some evidence that change is needed and without some inkling of how these changes will impact California businesses and consumers.

Recognizing that in cases involving unfair businesses practices or antitrust violations, penalties are designed to be severe enough to prevent corporations from treating fines as a mere cost of doing business, existing law already accomplishes this end. Moreover, both the U.S. Supreme Court and California Courts have recognized that penalties must be proportional to the wrongdoing and not excessive in order to avoid violating a defendant's due process rights, yet no such analysis has been conducted here. (*See e.g. State Farm*

Mutual Automobile Insurance Co. v. Campbell (2003) 538 U.S. 408 wherein the U.S. Supreme Court noted that grossly excessive punitive damages can violate due process.)

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

1) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to assess civil penalties as authorized by this bill. Actual costs will depend on the number of cases filed and the amount of court time needed to hear evidence and assess penalties. 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.

2) Possible increase in revenue (Attorney General Antitrust Account, local funds) of an unknown but potentially significant amount. This bill creates a new civil penalty and increases criminal fines. To the extent these penalties and fines are issued and collected, the resulting revenue may be used to fund antitrust enforcement actions by the Attorney General or distributed to the county of the district attorney that brought the action.

3) The Department of Justice (DOJ) reports no fiscal impact to the department. DOJ anticipates any future increase in workload resulting from more robust antitrust enforcement would be funded by the fine and penalty revenue described above.

VOTES

SENATE FLOOR: 29-10-1
YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener
NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares
ABS, ABST OR NV: Reyes

ASM JUDICIARY: 8-3-1
YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Papan, Stefani, Zbur
NO: Dixon, Macedo, Sanchez
ABS, ABST OR NV: Pacheco

ASM PUBLIC SAFETY: 7-2-0
YES: Schultz, Mark González, Haney, Harabedian, Nguyen, Ramos, Sharp-Collins
NO: Alanis, Lackey

ASM APPROPRIATIONS: 10-4-1
YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pellerin, Solache
NO: Sanchez, Dixon, Ta, Tangipa

ABS, ABST OR NV: Pacheco

UPDATED

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CONSULTANT: Shiran Zohar / JUD. / (916) 319-2334 FN: 0001378