
UNFINISHED BUSINESS

Bill No: SB 763
Author: Hurtado (D)
Amended: 9/2/25 in Assembly
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-2, 4/8/25

AYES: Umberg, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Wahab,
Weber Pierson, Wiener

NOES: Niello, Valladares

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 4/29/25

AYES: Arreguín, Caballero, Gonzalez, Pérez, Wiener

NOES: Seyarto

SENATE APPROPRIATIONS COMMITTEE: 5-1, 5/23/25

AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab

NOES: Seyarto

NO VOTE RECORDED: Dahle

SENATE FLOOR: 29-10, 6/4/25

AYES: 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

NOES: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto,
Strickland, Valladares

NO VOTE RECORDED: Reyes

ASSEMBLY FLOOR: 42-19, 9/12/25 – Roll call not available

SUBJECT: Conspiracy against trade: punishment

SOURCE: Attorney General Rob Bonta

DIGEST: This bill increases existing criminal fines, and permits the Attorney General or a district attorney to seek civil penalties of up to \$1 million, for a violation of the Cartwright Act.

Assembly Amendments deleted the bill's provisions that would have increased the maximum period of imprisonment for a criminal violation of the Cartwright Act.

ANALYSIS:

Existing federal law:

- 1) Establishes the Sherman Antitrust Act of 1890 (Sherman Act). (15 United States Code (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 state law:

- 1) Establishes the Cartwright Act. (Bus. & Prof. Code, div. 7, pt. 2, ch. 2, §§ 16700 et seq.)
- 2) 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 specified acts.
 - f) 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.)
- 3) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)
 - 4) Provides that any contract or agreement in violation of the Cartwright Act is absolutely void and not enforceable. (Bus. & Prof. Code, § 16722.)
 - 5) 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.)
 - 6) 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.
 - 7) 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.)
 - 8) Provides that a violation of the Cartwright Act is a conspiracy against trade, and that knowingly engaging or participating in such a conspiracy is a crime, punishable as follows:
 - a) If the violator is a corporation, by a fine of not more than \$1 million or the amount under (c), whichever is greater.
 - b) If the violator is an individual, by imprisonment pursuant to Penal Code section 1170(h) for one, two, or three years; by imprisonment for up to one year in a county jail; by a fine of not more than \$250,000 or the amount under (c), whichever is greater; or by both a fine and imprisonment.

- c) If any person derives pecuniary gain from a violation of the Cartwright Act, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than twice the amount of the gain or loss. (Bus. & Prof. Code, § 16755(a).)
- 9) Provides that all moneys received by a court in payment of any fine or civil penalty imposed pursuant to 9) shall 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 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(c).)

This bill:

- 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

California's primary antitrust law, the Cartwright Act, prohibits businesses from restraining trade, fixing prices, and reducing competition. The Cartwright Act provides criminal and civil enforcement mechanisms, permitting the Attorney General or a district attorney to seek fines and jail time for criminal violations, and treble damages in a suit brought on behalf of the people of California or the county in which the district attorney is located.

This bill modifies the available penalties under the Cartwright Act. First, the bill increases the criminal fines available under the Cartwright Act against a corporate and an individual violator. Second, the bill authorizes the Attorney General or a district attorney to seek civil penalties in any civil suit they bring under the Cartwright Act. Additionally, the bill allows any penalties recovered by the Attorney General to be deposited in the Attorney General antitrust account within the General Fund. These measures are intended to strengthen the Cartwright Act

and ensure that the Attorney General is able to prosecute Cartwright Actions against powerful corporations that are harming Californians.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, the fiscal effect is as follows:

- 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) Costs (local funds, General Fund) to the counties and the California Department of Corrections and Rehabilitation to incarcerate people convicted of conspiracy against trade. Actual incarceration costs will depend on the number of convictions, the length of each sentence, and whether each sentence must be served in county jail or state prison. The average annual cost to incarcerate one person in county jail is approximately \$29,000, though costs are higher in larger counties. The Legislative Analyst's Office estimates the average annual cost to incarcerate one person in state prison is \$133,000. County incarceration costs are not subject to reimbursement by the state. However, overcrowding in county jails creates cost pressure on the General Fund because the state has historically granted new funding to counties to offset overcrowding resulting from public safety realignment.
- 3) 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.
- 4) 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.

SUPPORT: (Verified 9/10/25)

Attorney General Rob Bonta (source)
American Economic Liberties Project
California Federation of Labor Unions, AFL-CIO
California Nurses Association/National Nurses United
Consumer Federation of California
Economic Security California Action
Health Access California
SEIU California
TechEquity Action
UDW/AFSCME Local 3930
Writers Guild of America West

OPPOSITION: (Verified 9/10/25)

American Property Casualty Insurance Association
Associated Builders and Contractors of California
Brea Chamber of Commerce
CalBroadband
California Apartment Association
California Business Properties Association
California Chamber of Commerce
California Grocers Association
California Hospital Association
California Restaurant Association
California Retailers Association
Civil Justice Association of California
Council of Business and Industries
CTIA – The Wireless Association
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

ARGUMENTS IN SUPPORT: According to the bill's source, Attorney General Rob Bonta:

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 upgrade criminal penalties under the Cartwright Act to better align them with those provided under the federal Sherman Antitrust Act...

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.

As the fifth largest economy in the world, and home to some of the wealthiest corporations, California has a responsibility to fight for a fair and competitive marketplace, especially amid the unprecedented wave of corporate mergers and market consolidation that we are seeing today. For these reasons, updating the penalties in the Cartwright Act is critical to deterring anticompetitive conduct in the current market.

ARGUMENTS IN OPPOSITION: According to a coalition of the bill's opponents:

The California Supreme Court has noted that the Cartwright Act is "broader in range and deeper in reach" than the Sherman Act. As a result, the penalties under the Cartwright Act would not be consistent with federal law because they could potentially apply to conduct beyond the scope of the Sherman Act. The California Office of the Attorney General has also acknowledged the Cartwright Act covers "broader" conduct than its federal counterpart and

argued that pleading a Cartwright Act violation does not require meeting the heightened pleading standard of Federal Rule of Civil Procedure 9(b).

The broader reach of the Cartwright Act, coupled with the possible lower pleading standards, could mean companies and individuals doing business in California could face devastating penalties with this increase. Moreover, the Cartwright Act provides a broader private right of action than the Sherman Act. Unnecessary and unwarranted expansions of California's antitrust law will invite excessive and abusive litigation and ultimately harm California's consumers and its economy.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
9/12/25 17:21:48

**** **END** ****