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California Restricts Use of Common Pricing Algorithms

Amendments to Cartwright Act Also Codify Permissive Pleading Standard for Certain Antitrust Claims and Increase Penalties

Last week, California enacted AB 325 and SB 763. These two laws amend the state's primary antitrust statute, the Cartwright Act, which generally prohibits combinations or agreements between two or more entities in restraint of trade, such as agreements to fix prices or to limit production. These amendments are effective as of January 1, 2026.

Together, AB 325 and SB 763:

- Add two new Cartwright Act violations related to the use or distribution of "common pricing algorithms."
- Lower the pleading standard for Cartwright Act claims.
- Establish civil penalties for violations of the Cartwright Act and increase maximum criminal penalties.
- Make remedies and penalties for Cartwright Act violations cumulative.

Two New Violations Relating to Common Pricing Algorithms (AB 325)

As Part of a Conspiracy to Restrain Trade

AB 325 explicitly outlaws the use or distribution of a "common pricing algorithm as part of a contract, combination in the form of a trust, or conspiracy to restrain trade or commerce." A common pricing algorithm is "any methodology, including a computer, software, or other technology, used by two or more persons, that uses competitor data to recommend, align, stabilize, set, or otherwise influence a price or commercial term."

This prohibition is broad in several respects. First, AB 325 makes no distinction between public and non-public competitor data, but instead simply prohibits using "competitor data" in an algorithm that affects price or a "commercial term." Second, the definition of "price" includes "compensation," raising implications for California's labor market and the manner in which salaries are set by employers. Third, the prohibition applies to a common pricing algorithm that would "otherwise influence" a "commercial term," without defining these phrases.

The Floor Analysis for the bill does note that AB 325 is "structured to avoid interfering with ordinary or beneficial uses of pricing software. It targets only those situations where separate firms use shared algorithms, consistent with antitrust law's focus on preserving 'independent centers of decisionmaking.' Businesses that develop or use their own proprietary pricing tools remain unaffected."

Coercion to Adopt a Recommended Price or Commercial Term

AB 325 also prohibits an entity from using or distributing a common pricing algorithm if the entity "coerces another person to set or adopt a recommended price or commercial term recommended by the common pricing algorithm for the same or similar products or services in the jurisdiction of" California.

New Pleading Standard (AB 325)

The new law also reforms the pleading standard for Cartwright Act violations that have the existence of an agreement as an element. In these instances, a "complaint shall not be required to allege facts tending to exclude the possibility of independent action." Rather, "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" are sufficient. This stands in contrast with the heightened pleading standard for claims brought under Section 1 of the Sherman Act, pursuant to which a plaintiff must also allege evidence that tends to exclude the possibility of independent conduct.[1] The upshot is that, all else being equal, California state courts are likely to be more permissive venues for antitrust conspiracy claims.

Penalties for Cartwright Act Violations (SB 763)

The Cartwright Act is enforced by the California Attorney General and county district attorneys, who may initiate criminal or civil proceedings.[2] Additionally, private parties who have been injured by a violation of the Cartwright Act may sue for treble damages and injunctive relief.[3]

Criminal Penalties

SB 763 increases criminal penalties for both corporations and individuals, though the final legislation did not go as far as earlier versions of the bill had proposed.

- Corporations: A corporation found guilty of a criminal Cartwright Act violation will now be subject to a fine of up to $6 million (rather than the former $1 million or proposed $100 million) or double either the gross gain derived from the violation or the gross loss suffered by the victim, whichever is greater.
- Individuals: An individual found guilty of a criminal Cartwright Act violation will be subject to imprisonment for one, two, or three years in a state prison (rather than the proposed two, three, or five years), imprisonment for not more than one year in a county jail, a fine of no more than $1 million (rather than the former $250,000) or double either the gross gain or gross loss (whichever is greater), or both a fine and imprisonment.

Civil Penalties

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.[4] An entity found to have violated the Cartwright Act in a civil action brought by either the California Attorney General or county district attorneys will now also be subject to a specific Cartwright Act civil penalty of up to $1 million for each violation.

Cumulative Remedies and Penalties

SB 763 clarifies that unless otherwise provided, the Cartwright Act's remedies and penalties are cumulative to each other as well as other remedies and penalties available under other state law, such as California's Unfair Competition Law, which authorizes civil penalties for conduct constituting "unfair competition" in the amount of $2,500 per violation.[5]

Significance

AB 325 and SB 763 together make government enforcement and private litigation more likely under the Cartwright Act and may have far reaching effects on how businesses design and deploy algorithms, which are increasingly common tools used to

[1] *Cf. Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 554–57 (2007).

[2] Cal. Bus. & Prof. C. §§ 16750(c), (g), 16754, 16760.

[3] *Id.* § 16750(a).

[4] *Id.* §§ 16750(c), 16754, 16754.5, 16760.

[5] *Id.* § 17206(a).

boost efficiency and responsiveness to market conditions, as well as on how businesses respond to changes in supply and demand.

AB 325's breadth in reaching algorithms that rely on public data is in contrast to the developing federal law on this issue. Courts are presently grappling with whether liability can attach under the Sherman Act if the algorithm at issue is not alleged to have relied on non-public data. In one recent example, the Ninth Circuit affirmed the dismissal of a putative class action complaint, framing the question posed as "whether Plaintiffs sufficiently state a Section 1 claim when they allege that the competing hotels *independently* purchased licenses for the same software, which software is alleged to have provided pricing recommendations, and *which software did not share any licensing hotel's confidential information among the competing licensees*."[6] The court concluded that this was insufficient to state a Sherman Act Section 1 claim, but noted that the analysis might change if plaintiffs allege that the software provider shared the confidential non-public information of each hotel with the other competing hotels.

AB 325 also goes further than laws passed by some cities, including San Francisco, which have focused on algorithms fueled by non-public data in the housing sector. Indeed, other pending pricing algorithm legislation is significantly narrower than California's new law. For example, New York's S.7882 would only regulate the use of algorithms in the residential housing context, while U.S. Senate Bill S.232 (Klobuchar) would only prohibit pricing algorithms using non-public competitor data (while creating an audit process for users or distributors of pricing algorithms).

AB 325 is also noteworthy because it creates a new basis of liability for information services companies and other algorithm providers, such as e-commerce platforms, that allegedly coerce their users into implementing recommended prices. The legislation does not define "coercion," and it could reach a range of common incentive structures and commercial terms including "give-to-get" data arrangements where companies agree to provide their own data to data aggregators in exchange for industry-wide data.

AB 325's rejection of a heightened pleading requirement excluding independent conduct could dramatically increase the number of Cartwright Act claims that make it past demurrer in state court, opening defendants up to full and expensive civil discovery. To the extent that claims under the amended Cartwright Act are removed to federal court, the parties may dispute whether the stricter federal standard applies, under which the complaint must also allege facts tending to exclude the possibility of independent action by the defendants.

SB 763's increased criminal fine thresholds and novel civil penalty will augment the options available to state enforcers, which are already quite broad under the Cartwright Act, with some California courts having found multiple violations arising out of a single course of conduct where multiple people are affected by separate acts, or even where a single act affects multiple victims.[7]

Against the backdrop of the Cartwright Act's amendments and state officials' calls for increased state antitrust enforcement, businesses should review the design and deployment of any algorithms used in their price-setting processes to mitigate the risk of increased California-based antitrust enforcement and litigation.

[6] *Gibson* v. *Cendyn Grp.*, 148 F.4th 1069, 1076 (9th Cir. 2025) (emphasis added).

[7] *See People* v. *Nat'l Ass'n of Realtors*, 155 Cal. App. 3d 578, 584–86 (1984); *People* v. *Super. Ct. (Olson)*, 96 Cal. App. 3d 181, 197–98 (1979).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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