

February 26, 2025

Proposed California Legislation Would Increase Antitrust Penalties

- California Senate Bill 763 would increase fines by a hundredfold for criminal violations of the Cartwright Act, the state's antitrust law.
- The proposed legislation would also provide, for the first time, specific penalties for civil violations of the Cartwright Act in enforcement actions brought by the California Attorney General or county district attorneys.

On February 21, 2025, California Attorney General Rob Bonta and State Senator Melissa Hurtado (D-Bakersfield) jointly unveiled [Senate Bill 763](#) (SB 763), which would amend California's Cartwright Act by increasing criminal penalties and creating new civil penalties in actions brought by the California Attorney General or county district attorneys. The officials state in a [press release](#) that "existing penalties for violations of the Cartwright Act . . . are insufficient to deter anticompetitive activity in the current market" and that "many powerful corporations view antitrust enforcement as just another cost of doing business." The amendments have been proposed at a time when the change in administration in Washington may give rise to a reordering of federal antitrust enforcement priorities, and as California and other state legislatures, including in New York,¹ are contemplating substantive expansions of their antitrust laws.

Background

Antitrust Enforcement in the United States

In the United States, federal and state governments both enforce antitrust laws. At the federal level, the Antitrust Division of the Department of Justice and the Federal Trade Commission are responsible for enforcement. State attorneys general may also bring civil actions in federal court under federal law (often with pendent state law claims).

States also have their own antitrust laws, many of which are analogous to federal antitrust laws. The Cartwright Act, California's antitrust law, is enforced by the California Attorney General and county district attorneys, who may initiate criminal or civil proceedings.²

In addition to government enforcement, private parties who have been injured by a violation of the Sherman or Cartwright Acts may sue for treble damages and injunctive relief.³ A Cartwright claim can likely be brought by out-of-state parties when they are harmed by conduct occurring in California.⁴

¹ [S.B. S335 \(NY 2025\)](#).

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

³ *Id.* § 16750(a); 15 U.S.C. § 15.

⁴ See *Effinger v. Ancient Organics LLC*, 657 F. Supp. 3d 1290, 1301 (N.D. Cal. 2023); *Northwest Mortg., Inc. v. Super. Ct.*, 72 Cal. App. 4th 214, 224–25 (1999).

California Antitrust Law

The Cartwright Act, California’s primary antitrust statute, was enacted in 1907 to address cartelization.⁵ It is similar to Section 1 of its federal counterpart, the Sherman Act. Both generally prohibit combinations or agreements between two or more entities in restraint of trade, such as agreements to fix prices or to limit production.⁶

The Cartwright Act does not have an analog to Section 2 of the Sherman Act, which governs single firm conduct, i.e., monopolization.⁷ In 2022, the California Law Revision Commission was authorized by the state legislature to [study](#), among other things, whether “the law should be revised to outlaw monopolies by single companies as outlawed by Section 2 of the Sherman Act.” A recent [staff memorandum](#) provided an initial recommendation for “adding a provision to address single firm conduct to California’s existing antitrust laws.” The staff also recommended several other amendments to California antitrust law, including adopting laws specific to mergers.

In the meantime, Attorney General Bonta and Senator Hurtado announced their bill, SB 763, to amend the Cartwright Act’s penalties.

SB 763’s Proposed Changes to Penalties for Cartwright Act Violations

SB 763 would increase fines for criminal violations to parallel those provided for violations of Section 1 of the Sherman Act,⁸ as well as add, for the first time, a specific provision for monetary penalties in lawsuits brought by the California Attorney General or county district attorneys for civil violations of the Cartwright Act. SB 763 also contains a provision that would make Cartwright Act remedies and penalties cumulative to each other as well as other remedies and penalties available under other state law.

- **Criminal Penalty:** The Cartwright Act currently provides criminal penalties for corporations and individuals. SB 763 would increase penalties in both instances.
 - **Corporations:** Currently, a corporation found guilty of a criminal violation of the Cartwright Act is subject to a fine of up to \$1 million or double either the gross gain derived from the violation or the gross loss suffered by the victim, whichever is greater.⁹ *Under SB 763*, the alternative maximum \$1 million fine would increase 100X to \$100 million.
 - **Individuals:** Currently, an individual found guilty of a criminal violation of the Cartwright Act is subject to imprisonment for one, two, or three years in a state prison, imprisonment for not more than one year in a county jail, a fine of no more than the greater of \$250,000 or double either the gross gain derived from the violation or the gross loss suffered by the victim, or both a fine and imprisonment.¹⁰ *Under SB 763*, the state prison sentence would increase to a term of either two, three, or five years, and the alternative maximum \$250,000 fine would increase 4X to \$1 million.
- **Civil Penalty:** 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.¹¹ California’s Unfair Competition Law authorizes civil penalties for conduct constituting “unfair competition” in the amount of \$2,500 per violation. Cartwright Act

⁵ Cal. Bus. & Prof. C. §§ 16720, 16726, 16750; *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758, 772 (2010).

⁶ *Id.*; 15 U.S.C. § 1; *Beverage v. Apple, Inc.*, 101 Cal. App. 5th 736, 749 (2024).

⁷ *Id.*; 15 U.S.C. § 2.

⁸ 15 U.S.C. § 1.

⁹ Cal. Bus. & Prof. C. §§ 16755(a)(1), (3).

¹⁰ *Id.* §§ 16755(a)(2), (3).

¹¹ *Id.* §§ 16750(c), (g), 16754, 16754.5, 16760.

violations constitute “unfair competition” and are currently subject to this civil penalty.¹² Under SB 763, an entity found to have violated the Cartwright Act in a civil action brought by either the California Attorney General or county district attorneys would also be subject to a specific Cartwright Act civil penalty of up to \$1 million for each violation. The amount of the penalty would be determined by the court or jury based on “any relevant circumstances presented by any of the parties to the case, including, but not limited to . . . the nature and seriousness of the misconduct,” any history of violations, the duration and “willfulness” of the misconduct, the defendant’s financial condition, and the “extent to which the defendant cooperated in the Attorney General’s or district attorney’s investigation and litigation.”

- **Cumulative Remedies and Penalties:** SB 763 would add Section 16762 to the Cartwright Act, clarifying 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. This means that conduct that violates both the Cartwright Act and another state statute could give rise to a penalty under the Cartwright Act that would be added onto the penalty for a violation of the other state law.

Significance

State criminal antitrust prosecutions in California are historically rare. The last one was over 25 years ago. However, in March 2024, Paula Blizzard, the head of antitrust enforcement at the California Department of Justice, indicated that the state would begin bringing criminal antitrust cases again.¹³ SB 763’s proposed enhancements of the Cartwright Act’s criminal penalties would significantly increase the already substantial potential consequences of a criminal Cartwright Act violation.

Further, SB 763’s addition of a specific Cartwright Act civil fine can also significantly increase civil liability because some California courts have found multiple violations of the Cartwright Act where multiple people are affected by separate acts, or even if a single act affects multiple victims.¹⁴

Finally, the Cartwright Act’s penalty amendments could have further impact if they were enacted and applied to violations that the Law Revision Commission staff has recommended, such as anticompetitive single firm conduct or anticompetitive mergers.

* * *

¹² Cal. Bus. & Prof. C. § 17206(a); *People v. Nat’l Assoc. of Realtors*, 155 Cal. App. 3d 578, 584–87 (1984).

¹³ Alex Wilts, [California’s top antitrust enforcer to revamp criminal enforcement](#), MLEX (Mar. 7, 2024).

¹⁴ *Nat’l Assoc. of Realtors*, 155 Cal. App. 3d at 584–85; *People v. Sup. Ct. (Olson)*, 96 Cal. App. 3d 181, 197–98 (1979).

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:

Walt Brown

+1-628-432-5111

wbrown@paulweiss.com

Meredith R. Dearborn

+1-650-208-2788

mdearborn@paulweiss.com

Katherine B. Forrest

+1-212-373-3195

kforrest@paulweiss.com

Martha Goodman

+1-202-223-7341

mgoodman@paulweiss.com

Joshua Hill Jr.

+1-628-432-5123

jhill@paulweiss.com

Melinda Haag

+1-628-432-5110

mhaag@paulweiss.com

William A. Isaacson

+1-202-223-7313

wisaacson@paulweiss.com

Joshua H. Soven

+1-202-223-7482

jsoven@paulweiss.com

Marc Price Wolf

+1-628-432-5167

mpricewolf@paulweiss.com

Practice Management Attorney Mark R. Laramie and associate Russell Wirth contributed to this Client Memorandum.