

AMENDED IN SENATE MARCH 18, 2024

SENATE BILL

No. 1154

**Introduced by Senator Hurtado
(Coauthors: Senators Archuleta and Cortese)**

February 14, 2024

An act to add ~~Section 12535 to the Government Code, relating to state government. Chapter 8 (commencing with Section 17370) to Part 2 of Division 7 of the Business and Professions Code, relating to business regulations.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1154, as amended, Hurtado. ~~Attorney General: emerging markets report. California Preventing Algorithmic Collusion Act of 2024.~~

Existing law establishes the Attorney General as the head of the Department of Justice, with charge of all legal matters in which the state is interested, except as specified. Existing law imposes various requirements on the Attorney General related to consumer protection, including, among others, the supervision of charitable trusts and the enforcement of antitrust laws. *Existing law, commonly known as the Cartwright Act, identifies certain acts that are unlawful restraints of trade and unlawful trusts and prescribes provisions for its enforcement through civil actions.*

This bill, the California Preventing Algorithmic Collusion Act of 2024 (the act), would require a person, as defined, upon request of the Attorney General, to provide to the Attorney General a written report, as specified, on each pricing algorithm, as defined, identified in the request. The act would require that all information submitted in a report under these provisions be treated as confidential and be considered privileged and confidential trade secrets exempt from disclosure under

the California Public Records Act. The act would authorize the Attorney General to share the report with the National Institute of Standards and Technology for technical assistance in understanding the report, as specified.

This act would prohibit a person from using or distributing any pricing algorithm that uses, incorporates, or was trained with nonpublic competitor data, as defined. If the Attorney General has reason to believe that a person has violated these provisions, the act would authorize the Attorney General to bring a civil action against the person in any court of competent jurisdiction in this state, as specified. The act would provide that certain presumptions are established as applicable, including that the defendant entered into a contract in restraint of trade, as specified, if the Attorney General establishes any of specified requirements, including that the defendant distributed the pricing algorithm to 2 or more persons with the intent that the pricing algorithm be used to set or recommend a price, as defined, or commercial term, as defined, of a product or service in the same market or a related market and 2 or more persons used the pricing algorithm to set or recommend a price or commercial term of a product or service.

This act would require a person that has \$5,000,000 or more in annual revenue that uses a pricing algorithm to recommend or set a price or commercial term to make certain disclosures, as specified, including to a customer, before the customer purchases the relevant product or service, that the price or a commercial term is set or recommended by a pricing algorithm. The act would provide that failure to comply with these disclosure provisions constitutes an unfair trade practice, as specified. If the Attorney General has reason to believe that a person has violated these disclosure provisions, the act authorizes the Attorney General to bring a civil action against the person in any court of competent jurisdiction in this state, as specified.

~~Existing~~

Existing law establishes the Governor's Office of Business and Economic Development (GO-Biz), which serves the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. Existing law establishes the Department of Financial Protection and Innovation in the Business, Consumer Services, and Housing Agency, headed by the Commissioner of Financial Protection and Innovation. Under existing law, the department has charge of the execution of specified laws relating to various financial institutions and

financial services. Existing law requires the commissioner to publish on the department’s internet website an annual report detailing actions taken during the prior year, including, among others, recommendations intended to result in improved oversight, greater transparency, or increased availability of beneficial financial products and services in the marketplace.

~~This bill would, commencing January 1, 2026, and every two years thereafter, require the Attorney General, in collaboration with the Department of Financial Protection and Innovation, to submit a report to the Legislature on the progress of emerging markets in California, as specified. The bill would make the report requirement inoperative on January 1, 2030, and would make related findings and declarations.~~

This act would require, on or before January 1, 2027, the office of the Attorney General to publish on its internet website, and notify the Legislature of the publication of, the results of a study conducted in collaboration with GO-Biz and the Department of Financial Protection and Innovation on the use of pricing algorithms using, incorporating, or trained with either or both public and nonpublic data, as specified, including, among other information, the prevalence of pricing algorithms.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8 (commencing with Section 17370) is
2 added to Part 2 of Division 7 of the Business and Professions
3 Code, to read:

4
5 CHAPTER 8. CALIFORNIA PREVENTING ALGORITHMIC
6 COLLUSION ACT OF 2024

7
8 17370. This chapter shall be known, and may be cited, as the
9 “California Preventing Algorithmic Collusion Act of 2024.”

1 17371. For purposes of this chapter, the following definitions
2 apply:

3 (a) “Antitrust laws” has the same meaning as defined in the
4 Clayton Act (15 U.S.C. Sec. 12), and includes Section 45 of Title
5 15 of the United States Code, and this part, including provisions
6 commonly known as the Cartwright Act (Chapter 2 (commencing
7 with Section 16700)).

8 (b) “Commercial term” means any of the following:

9 (1) Level of service.

10 (2) Availability.

11 (3) Output, including quantities of products produced or
12 distributed or the amount or level of service provided.

13 (4) Rebates or discounts made available.

14 (c) “Distribute,” “distribution,” and “distributing” include
15 selling, licensing, providing access to, or otherwise making
16 available by any means, including through a subscription or the
17 sale of a service.

18 (d) “Nonpublic competitor data” means nonpublic data that is
19 derived from or otherwise provided by another person that
20 competes in the same market as a person, or a related market.
21 “Nonpublic competitor data” does not include information
22 distributed, reported, or otherwise communicated in a way that
23 does not reveal any underlying data from a competitor, such as
24 narrative industry reports, news reports, business commentaries,
25 or generalized industry survey results.

26 (e) “Nonpublic data” means information that is not widely
27 available or easily accessible to the public, including information
28 about prices, commercial terms, and related products or services,
29 regardless of whether the data is attributable to a specific
30 competitor or anonymized.

31 (f) “Person” has the same meaning as defined in Section 16702.

32 (g) “Price” means the amount of money or other thing of value,
33 whether tangible or not, expected, required, or given in payment
34 for any product or service, including compensation paid to an
35 employee or independent contractor for services provided.

36 (h) “Pricing algorithm” means any computational process,
37 including a computational process derived from machine learning
38 or other artificial intelligence techniques, that processes data to
39 recommend or set a price or commercial term within the
40 jurisdiction of this state.

1 17372. (a) Upon written request by the Attorney General, a
2 person shall, no later than 30 days after the date of the written
3 request or any later date approved by the Attorney General,
4 provide to the Attorney General a written report on each pricing
5 algorithm identified in the request.

6 (b) Each report pursuant to subdivision (a) shall include all of
7 the following:

8 (1) Information on whether the person is responsible for the
9 development or distribution of the pricing algorithm, or whether
10 a third party is responsible for the development or distribution of
11 the pricing algorithm, including the identity and contact
12 information of any other person responsible for the development
13 or distribution of the pricing algorithm.

14 (2) Information on whether the pricing algorithm autonomously
15 sets prices or commercial terms and whether there is human review
16 of any recommendation or decision of the pricing algorithm.

17 (3) An explanation of the rules or processes that the pricing
18 algorithm uses to set or recommend prices or commercial terms.

19 (4) A description of all data the pricing algorithm uses to set
20 or recommend prices or commercial terms, including data used
21 to train the algorithm.

22 (5) All sources and collection processes, including the frequency
23 of collection, of any data that the pricing algorithm uses to set or
24 recommend prices or commercial terms.

25 (6) Whether the pricing algorithm engages in price
26 discrimination by setting or recommending different prices or
27 commercial terms for the following:

28 (A) Different customers seeking identical or nearly identical
29 products or services, and if so, the factors used in differentiating
30 among those customers.

31 (B) Different employees or independent contractors providing
32 substantially similar services, and if so, the factors used in
33 differentiating among those employees or independent contractors.

34 (7) Any changes made to the pricing algorithm between the date
35 of receipt of the request under subdivision (a) and the date of
36 certification under subdivision (c).

37 (c) The chief executive officer, chief economist, chief technology
38 officer, or a corporate officer of similar authority of a person shall
39 certify, under penalty of perjury, the accuracy of a report under
40 subdivision (a) submitted by the person.

1 (d) All information submitted in a report under subdivision (a)
2 shall be treated as confidential and shall be considered to be
3 privileged and confidential trade secrets exempt from disclosure
4 under the California Public Records Act (Division 10 (commencing
5 with Section 7920.000) of Title 1 of the Government Code).

6 (e) Notwithstanding subdivision (d), the Attorney General may
7 share the report pursuant to subdivision (a) with the National
8 Institute of Standards and Technology for technical assistance in
9 understanding the report if the National Institute of Standards and
10 Technology agrees to refrain from disclosing the contents of a
11 report shared under this subdivision or the analysis of the report
12 by the National Institute of Standards and Technology to any
13 person, except the office of the Attorney General.

14 (f) This section shall not be construed to do either of the
15 following:

16 (1) Limit the ability of the Attorney General to issue a civil
17 investigative demand, to issue a subpoena, to seek discovery in
18 the course of litigation, or to otherwise obtain information through
19 other means available to the Attorney General.

20 (2) Restrict the use of information submitted in a report under
21 subdivision (a) in the course of a formal investigation, enforcement
22 action, litigation, trial, or other proceeding, in accordance with
23 the confidentiality procedures applicable to that proceeding.

24 17373. (a) A person shall not use or distribute any pricing
25 algorithm that uses, incorporates, or was trained with nonpublic
26 competitor data.

27 (b) If the Attorney General has reason to believe that a person
28 has violated subdivision (a), the Attorney General may bring a
29 civil action against the person in any court of competent
30 jurisdiction in this state to seek to recover one or both of the
31 following:

32 (1) A civil penalty of one of the following:

33 (A) Not less than ten thousand dollars (\$10,000), adjusted for
34 inflation on the basis of the California Consumer Price Index, for
35 each day during which the violation occurs or continues to occur.

36 (B) The sum of the price of each product or service sold using
37 the pricing algorithm in violation of subdivision (a).

38 (2) Other appropriate relief, including an injunction or other
39 equitable relief.

1 17374. (a) If the Attorney General meets the requirements of
2 subdivision (b), there shall be, as applicable, the following
3 presumptions:

4 (1) The defendant entered into a contract in restraint of trade
5 in violation of Chapter 1 (commencing with Section 16600).

6 (2) The defendant entered into a contract, agreement, or trust
7 in violation of Chapter 2 (commencing with Section 16700).

8 (3) The defendant entered into a contract in violation of Chapter
9 4 (commencing with Section 17040).

10 (b) The applicable presumptions described in subdivision (a)
11 shall apply if the Attorney General establishes either of the
12 following:

13 (1) The defendant distributed the pricing algorithm to two or
14 more persons with the intent that the pricing algorithm be used to
15 set or recommend a price or commercial term of a product or
16 service in the same market or a related market and two or more
17 persons used the pricing algorithm to set or recommend a price
18 or commercial term of a product or service.

19 (2) The defendant used the pricing algorithm to set or
20 recommend a price or commercial term of a product or service
21 and the pricing algorithm was used by another person to set or
22 recommend a price or commercial term of a product or service in
23 the same market or a related market.

24 (c) The presumptions under subdivision (a) shall not apply to
25 a defendant if the defendant did not develop or distribute the
26 pricing algorithm and the defendant demonstrates by clear and
27 convincing evidence that the defendant did not have actual
28 knowledge or could not have reasonably known that the pricing
29 algorithm used nonpublic competitor data.

30 (d) In a civil case in which a presumption described in
31 subdivision (a) is applicable, any person that distributed the pricing
32 algorithm and knew, or could have reasonably known, that the
33 pricing algorithm would use, incorporate, or be trained with
34 nonpublic competitor data shall be jointly and severally liable for
35 any violation of Chapter 1, 2, or 4.

36 (e) Nothing in this section shall impair or limit the applicability
37 of antitrust laws.

38 17375. (a) A person that has five million dollars (\$5,000,000)
39 or more in annual revenue that uses a pricing algorithm to

1 *recommend or set a price or commercial term shall make, in a*
2 *clear manner, the following disclosures:*

3 *(1) To a customer, before the customer purchases the relevant*
4 *product or service, that the price or a commercial term, as*
5 *applicable, is set or recommended by a pricing algorithm.*

6 *(2) To a current or prospective employee or independent*
7 *contractor that the price or commercial term for services rendered*
8 *as an employee or independent contractor is set or recommended*
9 *by a pricing algorithm.*

10 *(b) (1) If applicable, a disclosure under subdivision (a) shall*
11 *state that the pricing algorithm sets or recommends different prices*
12 *for the following:*

13 *(A) Different customers seeking identical or nearly identical*
14 *products or services.*

15 *(B) Employees or independent contractors providing*
16 *substantially similar services.*

17 *(2) If applicable, a disclosure under subdivision (a) shall do*
18 *both of the following:*

19 *(A) State that the pricing algorithm was developed or distributed*
20 *by a person other than the person making the disclosure.*

21 *(B) Provide the identity of the person that developed or*
22 *distributed the pricing algorithm.*

23 *(c) Failure to provide a disclosure under subdivision (a),*
24 *including the information required under subdivision (b), shall*
25 *constitute an unfair trade practice in violation of Chapter 4.*

26 *(d) If the Attorney General has reason to believe that a person*
27 *has violated subdivision (a) or (b), the Attorney General may bring*
28 *a civil action against the person in any court of competent*
29 *jurisdiction in this state to seek to recover one or both of the*
30 *following:*

31 *(1) A civil penalty of not less than five thousand dollars (\$5,000),*
32 *adjusted for inflation on the basis of the California Consumer*
33 *Price Index, for each day during which the violation occurs or*
34 *continues to occur.*

35 *(2) Other appropriate relief, including an injunction or other*
36 *equitable relief.*

37 *(e) Nothing in this section shall impair or limit the applicability*
38 *of antitrust laws.*

39 *17376. On or before January 1, 2027, notwithstanding Section*
40 *10231.5 of the Government Code, the office of the Attorney General*

1 shall publish on its internet website, and notify the Legislature of
2 the publication of, the results of a study conducted in collaboration
3 with the Governor's Office of Business and Economic Development
4 and the Department of Financial Protection and Innovation on
5 the use of pricing algorithms using, incorporating, or trained with
6 either or both public and nonpublic data, including the following
7 information:

8 (a) The prevalence of pricing algorithms.

9 (b) The frequency of the use of pricing algorithms to engage in
10 price or wage discrimination.

11 (c) The potential for persons to use pricing algorithms to engage
12 in behavior that increases prices, lowers wages, reduces output,
13 lowers quality, deters innovation, or otherwise harms the
14 competitive process outside of the price-fixing context.

15 (d) The potential benefits or efficiencies of pricing algorithms.

16 (e) Any industries, sectors, or markets in which pricing
17 algorithms may warrant additional oversight or regulation to
18 protect competition and consumers.

19 (f) Recommendations for additional legislation, regulation, or
20 rulemaking relating to competition and consumer protection issues
21 arising from the use of pricing algorithms.

22 SEC. 2. The Legislature finds and declares that Section 1 of
23 this act, which adds Chapter 8 (commencing with Section 17370)
24 to Part 2 of Division 7 of the Business and Professions Code,
25 imposes a limitation on the public's right of access to the meetings
26 of public bodies or the writings of public officials and agencies
27 within the meaning of Section 3 of Article I of the California
28 Constitution. Pursuant to that constitutional provision, the
29 Legislature makes the following findings to demonstrate the interest
30 protected by this limitation and the need for protecting that
31 interest:

32 To protect the privileged and confidential trade secrets and
33 commercial or financial information of persons submitting a
34 written report, it is necessary to restrict the public's access to this
35 information.

36 ~~SECTION 1. The Legislature finds and declares:~~

37 ~~(a) California's economy is dynamic and diverse, with emerging~~
38 ~~markets playing a significant role in contributing to the state's~~
39 ~~economic growth and development.~~

~~(b) The state recognizes the importance of safeguarding consumers in emerging markets where novel products and services may pose unique risks. A thorough understanding of these markets is essential to establish robust consumer protection measures.~~

~~(c) Emerging markets often witness the introduction of new brands and trademarks. Studying these markets is imperative to maintain the integrity of trademark systems, prevent infringement, and ensure fair competition among businesses.~~

~~(d) California serves as an innovation hub, fostering the growth of emerging technologies and industries. Studying emerging markets within the state is essential to stay abreast of technological advancements and protect intellectual property rights.~~

~~(e) Emerging markets provide unique opportunities for small businesses and startups. Understanding these markets is essential for creating a supportive environment that encourages entrepreneurship and sustainable growth.~~

~~(f) The fluid nature of emerging markets demands continuous study to comprehend market dynamics, identify potential risks, and establish effective risk management strategies to protect businesses and consumers alike.~~

~~(g) Recognizing the critical importance of data security, California acknowledges the necessity to protect consumer data from unauthorized use, theft, and exploitation by entities. Emerging markets may pose increased risks of data vulnerabilities, requiring proactive measures to safeguard sensitive information.~~

~~(h) California is committed to preventing scenarios where consumer data is stolen and sold overseas, potentially allowing other countries to gain insights into the state's needs and vulnerabilities. That exploitation undermines California's sovereignty and necessitates stringent measures to prevent unauthorized access and data transfer.~~

~~(i) California aims to counteract situations where data stolen from the state is sold back by other countries, enabling them to influence or manipulate local markets. Stringent regulations and international cooperation are essential to prevent such practices and maintain control over the state's data.~~

~~SEC. 2. Section 12535 is added to the Government Code, immediately following Section 12534, to read:~~

~~12535. (a) Commencing January 1, 2026, and every two years thereafter, the Attorney General, in collaboration with the~~

1 Department of Financial Protection and Innovation, shall submit
2 a report to the Legislature on the progress of emerging markets in
3 California. The report shall include information on all of the
4 following:

5 (1) Data governance and security, including an assessment of
6 data governance practices within emerging markets, addressing
7 issues related to data security and preventing unauthorized use or
8 exploitation of consumer data.

9 (2) Anticompetitive practices, including an examination of
10 potential anticompetitive practices within emerging markets with
11 consideration given to the impact of data sharing and roll-up
12 strategies on competition, output, and pricing.

13 (3) Consumer protection measures, including an overview of
14 measures taken to protect consumers within emerging markets;
15 including safeguards against fraud, misinformation, and other risks
16 associated with novel products and services.

17 (4) Small business support and innovation, including an
18 evaluation of initiatives supporting the growth of small businesses
19 and startups in emerging markets and an assessment of the impact
20 of data practices on fostering innovation.

21 (5) Equity considerations, including an analysis of policies and
22 programs designed to promote equity within emerging markets,
23 ensuring that economic benefits are distributed equitably across
24 diverse communities and demographic groups.

25 (6) Federal collaboration, including an overview of collaboration
26 with federal partners to establish global data protection standards
27 applicable to emerging markets.

28 (7) Roll-up strategies oversight, including an examination of
29 roll-up strategies, particularly those involving private equity firms
30 or strategic buyers, with a focus on monitoring and enforcing
31 potentially anticompetitive roll-ups. Consideration of prior notice
32 and approval requirements for future transactions in consent orders.

33 (b) (1) The requirement for submitting a report imposed under
34 subdivision (a) is inoperative on January 1, 2030, pursuant to
35 Section 10231.5 of the Government Code.

36 (2) A report to be submitted pursuant to subdivision (a) shall
37 be submitted in compliance with Section 9795 of the Government
38 Code.

O