

Calif. Considers Stiffer Fines, Penalties and Prison Time as More States Contemplate Updating Their Antitrust Laws

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Following a trend of renewed state antitrust enforcement, California is contemplating an update to its antitrust laws with larger fines and penalties. The state already has one of the most comprehensive state antitrust statutes, called the Cartwright Act. According to a press release issued by the California Office of the Attorney General, “existing penalties for violations of the Cartwright Act ... are insufficient to deter anticompetitive activity in the current market,” and “many powerful corporations view antitrust enforcement as just another cost of doing business.”

The bill in question, Senate Bill 763, was announced in February 2025 by California Attorney General Rob Bonta and state Sen. Melissa Hurtado (Senate District 16). It would increase the maximum criminal fine for antitrust violations from \$1 million to \$100 million for corporations and from \$250,000 to \$1 million for individuals. (As before, the statute would also allow for fines of double the gross gain derived from the violation or double the gross loss suffered by the victim.) The maximum prison sentence for antitrust violations would increase from one, two or three years to two, three or five years.

Senate Bill 763 would also create civil penalties of up to \$1 million per violation. Courts and juries would calculate penalties by considering seven factors enumerated by the bill: the nature and seriousness of the misconduct; the number of violations committed by the defendant; the persistence of the defendant's misconduct; the length of time over which the defendant's misconduct occurred; the willfulness of the defendant's misconduct; the defendant's assets, liabilities and net worth; and the extent to which the defendant cooperated in the government's investigation and litigation. (As before, treble damages and reasonable attorney fees would also be recoverable by plaintiffs in private antitrust cases.)

Other states are similarly looking to update—and even pass—their own antitrust laws. New York, for example, is considering amending the Donnelly Act, its state antitrust law, via a bill called the Twenty-First Century Anti-Trust Act. It would, among other things, restrict enterprises with a “dominant position” from “abusing” that

dominance, require state reporting of mergers subject to the federal Hart-Scott-Rodino Act, and increase individual and corporate financial penalties to \$1 million (from \$100,000) and \$100 million (from \$1 million), respectively. (As with California's Cartwright Act, the Donnelly Act has long allowed recovery of treble damages and reasonable attorney fees.)

Pennsylvania too considered an antitrust bill just last year. While historically the commonwealth has relied exclusively on federal law to prosecute anti-competitive conduct civilly, in 2024 the Pennsylvania House of Representatives approved the Pennsylvania Open Markets Act. If it had cleared the Pennsylvania Senate, it would have prohibited restraints of trade, monopolization and attempted monopolization, and certain acquisitions that risk harm to competition—hewing closely to the structure of the Sherman and Clayton Acts. Had it passed, the bill would have also created a private right of action, authorized treble damages and criminalized certain conduct. The legislature may reintroduce the bill, or a new version of it, in this or a future legislative session.

The California and New York bills remain under review in their respective legislatures, and the future of a Pennsylvania antitrust statute is uncertain. However, in a world where states are increasingly at the forefront of antitrust enforcement, business leaders need to keep a close eye on the amalgam of laws—state and federal, statutes and case law—that make up the body of jurisprudence we call the U.S. antitrust laws. Stay tuned.

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