April 1, 2025

TO: Members, Assembly Judiciary Committee

SUBJECT: AB 325 (AGUIAR-CURRY) CARTWRIGHT ACT: VIOLATIONS
OPPOSE – AS AMENDED MARCH 10, 2025
SCHEDULED FOR HEARING – APRIL 8, 2025

The California Chamber of Commerce and the undersigned are **OPPOSED** to **AB 325 (Aguiar-Curry)** as amended on March 10, 2025, as it is unnecessary, it could create a chilling effect on the use of this technology, and it would impose significant cost on all businesses using technological tools that fall under the bill's definition of a "pricing algorithm".

Although poorly worded, it appears that **AB 325** is intended to prohibit a person from using or distributing any pricing algorithm that uses, incorporates or was trained with nonpublic competitor data. In this regard, we note significant similarity between this bill and SB 1154 (Hurtado, 2024) from last year, which was designated as a Job Killer. The most notable difference between the two bills is that this bill does not include SB 1154's additional liability provisions.

Nonetheless, **AB 325** remains as serious a concern, in part because there are other related bills that would address the liability components of these issues, and existing law imposes significant liability on the misuse of pricing algorithms as well. When combined with the bill's broad and vague standards, **AB 325** would invariably have a chilling effect on the use of such technologies among businesses, particularly smaller ones who rely more heavily on these technologies to be more competitive with larger businesses that have access to far more data.

First and foremost, this bill, like SB 1154 before it, and SB 295 (Hurtado, 2025), appears based on a presumption that pricing algorithms are inherently problematic, if not unlawful. To the contrary, pricing algorithms are, in fact, extremely common tools that enable businesses to save money, improving efficiency by avoiding manual pricing, reducing costs for consumers, and making prices far more responsive to changes in supply and demand - and they can do so without involving any anti-competitive conduct.

In contrast, price collusion (or price fixing) *is* problematic and is clearly illegal under current federal and state laws. Indeed, existing antitrust laws prohibit competitors from colluding on price in any manner, whether through using a pricing algorithm or otherwise. **In other words, whether a price-fixing conspiracy is hatched by salespeople conspiring or computers running algorithms, collusion is collusion and is already effectively covered by existing law. To be clear, however, the use of a pricing algorithm does not inherently constitute price *fixing*.**

Retailers use pricing algorithms to ensure they are offering the most competitive prices to consumers. Realtors use them to help clients set home prices. Banks use them to set terms (e.g. rates and fees) for services. Hospitality, airlines, transportation network companies, utilities, ticket venues, and many others use them for dynamic pricing. The list goes on.

All this bill does is remove a valuable tool for setting dynamic pricing and imposes significant costs on all businesses that use price algorithms, thereby reducing competition, rather than promoting it. In the end, this bill hurts not only businesses, taking them back to pre-technological times, but it hurts consumers,

effectively doing away with price-comparison shopping and competitive/dynamic pricing by businesses seeking to earn their business.

If enacted, **AB 325's** reliance on incredibly broad, ill-defined terms and ambiguous standards will invariably muddy the distinction between permissible pricing algorithms and price fixing, creating significant confusion for businesses. For one thing, the bill's definition of "pricing algorithm" is so overly broad and vague that it captures *any* algorithm that uses a computational process. For another, **AB 325** prohibits the use or distribution of any "pricing algorithm" that uses, incorporates, or was trained on "nonpublic competitor data." "Nonpublic competitor data", however, is not actually limited to nonpublic information.

Rather, even the use of a competitor's *public* prices could be deemed "nonpublic competitor data" if the data is later determined to have not been "widely available" or "easily accessible" to the public. Of course, what is considered widely available or easily accessible to the public is entirely unclear as the bill is currently drafted. These are just two (of many) examples of definitional defects with the proposed statutory language in **AB 325**.

Notably, in direct contrast to SB 1154 and SB 295, **AB 325** claims that the above prohibition against the use or distribution of a pricing algorithm used, distributed, or trained with nonpublic competitor data "does not constitute a change in, but is declaratory of existing law." This raises serious concern that the Legislature could be interfering with pending litigation in making such a statement on the one hand, and the validity of the statement on the other (as the Legislature does not need to pass laws restating existing law unless it is intending to impact pending litigation or overturn a court decision).

Additionally**, AB 325** makes it unlawful for a business to use or distribute any pricing algorithm that uses, incorporates or was trained with data *other than nonpublic competitor data*, if intended to allow two or more persons to set a price. Thus, the bill both makes it unlawful to use, incorporate, or train an algorithm based on nonpublic competitor data, and to use, incorporate, or train an algorithm based on anything *other than* nonpublic competitor data – effectively banning the use or distribution of any pricing algorithm, but for the two exceptions.

The only available exception to these broad prohibitions is if a business can prove, by clear and convincing evidence (a very high burden), that it neither knew, nor could it have reasonably known, that the pricing algorithm was used by two or more persons to set or recommend a price or commercial term of a product or service in the same or related market. Setting aside the fact that this requires a defendant to prove its innocence, which is contrary to the United States and California legal systems, it is highly unlikely that a business will know how its pricing algorithm may, or may not, be used by others in the market, creating significant liability exposure for any business using or releasing pricing algorithms.

Therefore, because we believe this bill will actually hurt price competition among businesses across all industries, due to overbroad, vague, and onerous requirements that create significant liability exposure and invariably chill the use of wide-used tools that currently enable businesses to make their prices more responsive to changes, including price decreases that benefit consumers, we strongly **OPPOSE AB 325 (Aguiar-Curry)**.

Sincerely,

Ronak Daylami
Policy Advocate
on behalf of

American Property Casualty Insurance Association, Laura Curtis
California Business Properties Association, Skylar Wonnacott
California Chamber of Commerce, Ronak Daylami
California Hospital Association, Kalyn Dean

California Retailers Association, Ryan Allain
Insights Association, Howard Fienberg
Software Information Industry Association, Abigail Wilson

cc: Legislative Affairs, Office of the Governor
Consultant, Assembly Judiciary Committee
Loyal Terry, Office of Assemblymember Aguiar-Curry
Daryl Thomas, Consultant, Assembly Republican Caucus

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