UPDATED

COST DRIVER

April 2, 2025

TO: Members, Senate Judiciary Committee

SUBJECT: SB 763 (HURTADO) CONSPIRACY AGAINST TRADE: PUNISHMENT
OPPOSE/COST DRIVER – AS INTRODUCED FEBRUARY 21, 2025
SCHEDULED FOR HEARING – APRIL 8, 2025

The California Chamber of Commerce and the undersigned are **OPPOSED** to **SB 763** (Hurtado) as introduced on February 21, 2025, as a **COST DRIVER**, which seeks to raise corporate penalties under California's antitrust law, the Cartwright Act, from $1,000,000 to $100,000,000, and individual penalties from $250,000 to $1,000,000. This represents a 10,000% and 300% increase, respectively. **SB 763** also authorizes an *additional* civil penalty of not more than $1,000,000 to be assessed and recovered in any civil action brought by the Attorney General (AG) or any district attorney against any person, corporation, or business entity for a violation of the Cartwright Act. These penalties would be cumulative of each other and all other remedies or penalties available under state law. We are unaware of any comparable instance wherein the State has arbitrarily sought to impose such a massive, across-the-board increase in penalties and fines. Doing so implies that there are widespread antitrust violations occurring with impunity – a claim for which no evidence has been presented and of which we are unaware.

As a general matter, statutory reforms are appropriate when there is a demonstrable need for reform. Similarly, antitrust policy is most likely to benefit competition and consumers when it is supported by sound economic analysis. As we have noted in our comments to the California Law Revision Commission, which is actively in the process of considering an expansion of California's Cartwright Act following ACR 95 (Cunningham and Wicks, Chapter 147, Statutes of 2022), there has been no demonstration of any need to revise California's antitrust laws. Indeed, we have seen no showing that Californians are suffering from higher prices, inferior products or services, or less competition under the current California antitrust regime.

Moreover, while the federal Sherman Antitrust Act of 1890 imposes criminal penalties of up to $100 million for a corporation and $1 million for an individual, with up to 10 years in prison, the California Supreme Court has opined that the State's antitrust law is "broader in range and deeper in reach" than the Sherman Act. (*See In re Cipro cases I and II* (2015) 61 Cal.4th 116, 160.) In other words, the Cartwright Act arguably applies to conduct that extends beyond the scope of the Sherman Act. As a result, the penalties under state law cannot be directly equated to those under federal law, as the Sherman Act does not necessarily encompass all of the business activities regulated by the Cartwright Act. It simply is not an apples-to-apples comparison.

Nonetheless, existing penalties for violating the Cartwright Act – which include treble damages, attorney's fees and costs for prevailing parties, and injunctive relief in civil matters, as well as imprisonment and hefty fines in criminal matters – are significant. Moreover, the Cartwright Act already contains an alternative

sentencing provision that allows the State to seek corporate fines in excess of the statutory maximum and up to two times the gross financial gain or financial loss caused by the unlawful conduct. The Cartwright Act's existing penalties are simply better aligned with the broader scope of the law and give State enforcers the flexibility needed to tailor penalties to the particular offenses proven.

To now pair exceedingly high penalties of the Sherman Act with the broader scope of the Cartwright Act, while also adding new statutory penalties (*i.e*., the proposed $1,000,000 civil penalty that would be assessed in a civil action brought by the AG or district attorney), would go beyond punishing bad actors and deterring unlawful conduct. It would cripple businesses, harm California's economy, and burden consumers. The prospect of massive financial penalties could incentivize the filing of meritless or weak claims. And in all but the most baseless of cases, the looming threat of excessive liability will pressure and virtually guarantee that risk averse defendants will settle – not based on guilt, but simply to avoid the risks of litigation.

Penalties serve several different functions: they are designed to deter unlawful conduct, but are also designed to punish wrongdoers and compensate victims. It is bad policy to disrupt the balance of these aims with massive increases in penalties without some evidence that change is needed and without some inkling of how these changes will impact California businesses and consumers.

Recognizing that in cases involving unfair businesses practices or antitrust violations, penalties are designed to be severe enough to prevent corporations from treating fines as a mere cost of doing business, existing law already accomplishes this end. Moreover, both the U.S. Supreme Court and California Courts have recognized that penalties must be proportional to the wrongdoing and not excessive in order to avoid violating a defendant's due process rights, yet no such analysis has been conducted here. (*See e.g*. *State Farm Mutual Automobile Insurance Co. v. Campbell* (2003) 538 U.S. 408 wherein the U.S. Supreme Court noted that grossly excessive punitive damages can violate due process.)

Because this bill proposes grossly excessive penalties that may very well violate due process and spell the end to many California businesses, we must respectfully **OPPOSE SB 763 (Hurtado)** as a **COST DRIVER.**

Sincerely,

Ronak Daylami
Policy Advocate
on behalf of

American Property Casualty Insurance Association, Laura Curtis
California Chamber of Commerce, Ronak Daylami
California Hospital Association, Kalyn Dean
California Retailers Association, Ryan Allain
Civil Justice Association of California, Kyla Powell
Insights Association, Howard Fienberg
Software Information Industry Association, Abigail Wilson
TechNet, Robert Boykin
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cc: Legislative Affairs, Office of the Governor
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RD:ldl