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SINCE 1907

Housing Contractors of California

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California Strawberry Commission

Athens Services

Western Wood Preservers Institute Est. 1947

Greater Ontario Business Council
The Intersection of Community and Commerce

California Fresh Fruit Association

NAMIC National Association of Mutual Insurance Companies
Shaping Our Mutual Future

Elevate California

California CBBD Beer & Beverage Distributors

African American Farmers of California

West Ventura County Business Alliance

CalAsian Chamber of Commerce

Oceanside Chamber of Commerce
Advancing Oceanside

California Hispanic Chambers of Commerce Est. 1978

San Diego Regional Chamber

Orange County Business Council

Mission Viejo Chamber of Commerce
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SVLG Silicon Valley Leadership Group

Tulare Chamber of Commerce

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Greater Riverside Chambers of Commerce

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Tri-County Chamber Alliance
San Luis Obispo | Santa Barbara | Ventura

Tulare Chamber of Commerce

Self Storage Association
Participate. Learn. Benefit. Succeed.

Santa Barbara South Coast Chamber of Commerce
From Goleta to Carpinteria

Santa Monica Chamber of Commerce

Greater Conejo Valley Chamber of Commerce

COST DRIVER

June 22, 2026

Senator Tom Umberg, Chair
Senate Judiciary Committee
1021 O Street, Suite 3240
Sacramento, CA 95814

SUBJECT: AB 1776 (AGUIAR-CURRY) COMPETE ACT: OPPOSE/COST DRIVER
AS AMENDED JUNE 16, 2026

Dear Senator Tom Umberg,

The California Chamber of Commerce remains **OPPOSED** to **AB 1776 (Aguiar-Curry)** as a **COST DRIVER**, as it is unnecessary, fails to give courts and businesses guidance as to what is lawful and unlawful, applies to all business in all sectors, creates a chilling effect on standard business practices that have always been viewed as legal and procompetitive, and will increase litigation and impose significant cost on consumers as well as all businesses operating in California.

AB 1776 FAILS TO DEFINE WHAT IS UNLAWFUL AND REJECTS OVER A CENTURY OF LEGAL PRECEDENCE

AB 1776 amends California's Cartwright Act to include prohibitions on Single-Firm conduct, whereas the Act has only covered the coordinated conduct of two or more firms since its passage in 1907. Specifically, the bill prohibits single-firm "restraints of trade," but lacks limiting principles or any meaningful guidance for courts and businesses as to what is, and what is not, unlawful single-firm conduct. While the "restraint of trade" term used in **AB 1776** is a familiar one in antitrust law, no court or statute has ever defined how that term applies to single-firm conduct, and the bill makes no effort to do so. Restraints of trade have always been evaluated by courts in the context of two or more firms agreeing to take certain actions. For example, the Cartwright Act currently defines a restraint of trade as acts by "two or more persons" to do things like "limit or reduce [] production," "increase the price of merchandise," or "fix at any standard or figure" prices charged in the State. Thus, it has always been unlawful for two or more competitors to agree to reduce production, increase prices or fix prices charged in the State. But at the same time, it has always been ***lawful*** for single firms to unilaterally decide on their levels of production and prices, meaning that **AB 1776** calls into question the legality of common business practices—such as unilateral price cuts, loyalty programs, rebates, licensing decisions, and efforts to undercut rivals—that are generally legal under federal law and viewed as good for competition and good for consumers. The shear novelty of the bill's "restraint of trade" language will cause great uncertainty, will increase costs, will increase litigation and is likely to result in conflicting results in the courts.

These uncertainty concerns are compounded by the bill's new instruction to courts that any lawsuit brought under **AB 1776** "shall not be dismissed or rejected on the pleadings or merits pursuant to the [federal] Sherman Act or any case decided thereunder unless the court also finds that such a dismissal or rejection is consistent with this Chapter." This guidance intentionally obscures the long and consistent line of California cases recognizing that federal antitrust precedent is "often helpful," "an aid" and "useful" in interpreting the Cartwright Act. *State of California ex rel. Van de Kamp v. Texaco, Inc.* (1988) 46 Cal.3d 1147, 1164; *Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal. App. 4th 1224, 1240; *Flagship Theatres of Palm desert, LLC v. Century Theatres, Inc.* (2011) 198 Cal. App. 4th 1366, 1374. It also ignores the fact that the California Supreme Court has itself repeatedly and expressly adopted federal antitrust standards as applicable to the Cartwright Act. *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 775 ("the federal *Hanover Shoe* rule is most consistent with legislative intent and applies equally to state claims under the Cartwright Act."); *In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 144-147 (ruling that federal antitrust review standards "make[] equal sense for claims for claims under the Cartwright Act."); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 843-48 (adopting federal summary judgment standards in conspiracy claims under the Cartwright Act). Moreover, it will be incredibly difficult for a business to convince a California court that existing antitrust precedent is “consistent” with **AB 1776** because there is no antitrust law in the world that is consistent with **AB 1776** given its novelty. Efforts to dissuade California courts from considering federal antitrust precedent is not only contrary to the way our systems have interacted for decades, but it also creates more uncertainty regarding the meaning and reach of **AB 1776**.

AB 1776 further breaks with established law in its direction that anticompetitive effects and procompetitive justifications “shall be evaluated within the same relevant market.” This also ignores the reality that procompetitive benefits to consumers, such as lower prices and better services, are often felt in separate markets, thereby flipping on its head the “consumer welfare standard” that has guided courts and antitrust policy for decades. In another bizarre rejection of federal law, **AB 1776** states that “one or more” persons may be held liable for monopolization, whereas federal courts and economists have always recognized that monopolization – as the name implies – is the complete domination of a market by a ***single*** competitor. **AB 1776’s** disavowal of these guiding, federal standards will not only increase litigation and costs, but leaves California courts with little guidance and assistance in dealing with these complex issues.

CREATES LEGAL LIABILITY FOR BUSINESSES – REGARDLESS OF SIZE

AB 1776 is deeply flawed in that it has no market share, revenue or size thresholds in its application, other than the small business exception, which is narrow. For decades, courts and economists have been aligned in the basic economic view that small and medium sized businesses have far less of an ability to harm competition than large businesses. For that reason, the federal single-firm conduct statute, Section 2 of the Sherman Act, does not even apply to businesses unless they have a 60 or 65 percent share of the market. **AB 1776** lacks a similar threshold, meaning that most businesses will be subject to a potential lawsuit under the bill and it creates a whole new set of compliance costs for even small- and medium sized firms that they never faced under federal law.

THE RECENT AMENDMENTS DO NOT ADDRESS THE CORE CONCERN: UNCERTAINTY

The recent amendments to **AB 1776** – most of which are grammar fixes or internal cross references – do not at all address the chief concern with the bill: The profound uncertainty that **AB 1776** creates and the sheer lack of guidance for businesses and courts as to what is, and what is not, an unlawful single-firm restraint of trade. To be clear, the amendments say nothing meaningful about how businesses can structure their conduct to comply with the law in the first place. In fact, the recent amendments arguably provide less guidance and create more uncertainty.

As a starting point, the amendments’ use of the *In re Cipro Cases I & II* as “guidance” for California courts is a peculiar and problematic selection. The *In re Cipro Cases I & II* decision was not a standard antitrust case, and it certainly was not a single-firm conduct case. Rather, it involved a highly-technical evaluation of antitrust claims arising from "reverse payment" settlements between brand-name and generic pharmaceutical companies in the context of patent litigation — a narrow and specialized category of conduct with no meaningful analog to ordinary single-firm conduct claims. Mandating that courts adjudicating all single-firm conduct claims under **AB 1776** use *In re Cipro Cases I & II* as their guiding framework is not a clarification — it is a mismatch that will generate satellite litigation over how that decision applies (or does not apply) to the vast array of single-firm conduct claims that bear no resemblance to reverse-payment pharmaceutical settlements. If the proposed amendments were aimed at providing clarity, they missed the mark by relying on *In re Cipro Cases I & II*.

The bigger problem with the amendments, however, is that they conflate a test for judging the legality of single-firm conduct with guidance to businesses on how to comply with the law in the first place. In other words, invocation of the “rule of reason” analysis contemplated in the amendments is not one that gives businesses any meaningful direction on what is, and what is not, unlawful. The rule of reason has always been, and will always be, a subjective, after-the-fact analysis of challenged conduct in litigation to determine whether, on balance, the anticompetitive impact of certain conduct outweighed the procompetitive effects from that same conduct. Not surprisingly, courts, juries, economists and lawyers evaluate these issues differently and can come to opposing views when evaluating the same conduct. The rule of reason presents no objective guardrails that tell businesses where potential lines are between lawful and unlawful conduct before they get sued.

That is not the case under existing law. Under current California and federal antitrust law, businesses have meaningful upfront guidance: unilateral, single-firm conduct by a company that does not possess monopoly power is generally lawful. Those two concrete, upfront indicia of lawful conduct—unilateral action and the absence of monopoly power—are what AB 1776 eliminates. In their place, businesses will only know whether their conduct is lawful once a court and jury complete a rule of reason analysis, after the business has spent millions defending antitrust litigation. And there will almost certainly be conflicting judicial decisions on what type of conduct satisfies the rule of reason for the foreseeable future. That reality was true before the amendments to **AB 1776**, and it remains true after the amendments.

For the same reasons, the amendments' "clarification" that **AB 1776** only applies to "unreasonable" restraints does nothing to resolve the bill's central flaw. What is, and what is not, unreasonable single-firm conduct can only be identified once a judge and jury conduct a full-blown rule of reason analysis after the fact, which is problematic for the reasons described above. Also, it is antitrust doctrine that "[s]ubjecting a single firm's every action to judicial scrutiny for reasonableness would threaten to discourage the competitive enthusiasm that the antitrust laws seek to promote." *Copperweld Corp. v. Independence Tube Corp.* (1984) 467 U.S. 752, 775. This clarification clarifies little.

Likewise, the proposed amendments' "market power" addition adds nothing. While requiring proof of market power sounds like a meaningful limitation, in practice it does not guide businesses in complying with the law. Market power—like reasonableness and the rule of reason itself—is a subjective and inherently litigation-dependent standard that asks whether a firm can profitably raise prices above competitive levels without losing a significant number of competitors. Firms do not typically (or ever) engage in controlled pricing experiments to test whether or not they possess market power. The question can only be answered after the fact in a lawsuit and it is often informed by competing expert witnesses reaching opposite conclusions. Adding a market power requirement provides no meaningful guidance to businesses seeking to ensure that they do not find themselves in the swarm of antitrust litigation that will be generated by **AB 1776**.

Finally, the "small business" exception created by the amendments is not as helpful as it appears because it is not a bar to small businesses getting sued. Indeed, a potential plaintiff is not likely to know whether a potential defendant qualifies as a "small business" because most businesses are privately held and do not publicly report the domicile of their officers, the number of their employees or their "average gross receipts." In other words, small businesses can still be sued under **AB 1776** they will just have a potential affirmative defense after getting sued and investing the money, time and energy to prove that affirmative defense. Moreover, in California Superior Court it can take a year or more to even get a hearing on a motion to dismiss a lawsuit (or what we call a demurrer in California), meaning a small business may be subject to expensive discovery while its motion to dismiss is pending. This is not a fix.

RAISES COSTS FOR BUSINESSES AND CONSUMERS

Under the bill, price cutting, programs designed to gain loyal customer followings such as rewards programs offered by hotels and airlines, or discounts provided by pharmaceutical companies, innovation aimed at incremental or temporary gains in market share, regardless of the size of the business or others in the market, would be subject to government and private lawsuits that allow for treble damages. **AB 1776** will significantly chill the very competition it seeks to protect and will harm all Californians.

The bill's vague text may also outlaw common business practices that are generally viewed by courts and economists as pro-competitive and good for consumers. For instance, under current California and federal law, competitors seek to undercut their rivals by slashing prices to consumers. They introduce innovative products aimed at driving outdated and inefficient competitors into ruin. They give discounts and other benefits to resellers seeking to invest in, and promote, their products to the exclusion of their competitors. They give rebates and rewards to loyal customers choosing to forego purchases from competing businesses. And they pick and choose the firms they will and will not do business with in order to best position their products. Indeed, these types of competitive strategies are ubiquitous in the economy and coveted by consumers. But these kinds of standard, unilateral business decisions may be cast as unlawful under **AB 1776** as single-firm "restraints of trade" by businesses that have lost the competitive race and enterprising plaintiffs' lawyers.

Additional examples of common business conduct that will be impacted by **AB 1776** can be found with respect to intellectual property. For instance, under the bill, would a business in California with a patented technology be required to license that technology to all other businesses in California so as not to restrain competition among those businesses? Would a manufacturer licensing a technology be able to enforce exclusive territories in California or other use restrictions in its licenses, which is a common practice today? Would movie studios be required to give all cinemas in the State the right to show all movies, or could the studios license their movies to the cinemas of their choosing, as they do today? Unanswered questions like these caused the CLRC's own Single Firm Conduct Working Group, which studied these issues, to oppose the text of **AB 1776**, warning that it ***"gives the courts no useful guidance on how to distinguish restraints that promote competition from those that suppress or even destroy competition."*** The Antitrust Section of the American Bar Association sees it the same way: ***"The absence of adequate limiting principles will present substantial challenges for enforcers and the judiciary, particularly generalist judges, particularly when applying the new statute to cases of first impression. It will also increase the risk of unintended or inconsistent legal outcomes."*** **Put simply, AB 1776 is akin to a bill that changes the speed limit on the State's highways but fails to disclose to drivers the new limits.**

NO ECONOMIC REVIEW DONE ON PROPOSAL

As a fundamental matter, there is no economic analysis or study showing, or even suggesting, that California's antitrust laws are failing. There is no empirical or economic analysis demonstrating that California consumers and businesses are suffering from reduced competition, higher prices, inferior products or lessened innovation because of gaps in California antitrust law. Antitrust policy making is most likely to benefit competition and consumers when it is based on a demonstrated need and sound economic analysis. This work simply has not been done.

Likewise, there has been no cost-benefit analysis performed to determine whether the bill's revisions to California's antitrust laws – on balance – are likely to improve economic performance and efficiency at a cost the State is willing to bear. Obviously, antitrust policy making has tradeoffs: Regulation can deter anticompetitive conduct, but it can also chill competition and innovation due to uncertainty or poorly-designed laws. Stifling pro-competitive conduct can harm consumers and the overall economy in the same manner as anticompetitive conduct, meaning there is no reasonable basis to ignore the chilling effects of legislation like **AB 1776**. That is why it is imperative to utilize a cost-benefit analysis to determine whether the bill is – on balance – good for Californians. This work also has not been done.

Passing **AB 1776** in a vacuum or based on anecdotal and unsupported beliefs that competition in California is not as robust as it could be is bad for California businesses and ultimately California consumers. The kind of expansive revisions found in the bill should only be considered when there is a demonstrated need for them and there is sound economic evidence suggesting that revisions to existing law are likely to benefit Californians.

NARROWER PROPOSAL REPEATEDLY REJECTED BY NEW YORK

An experiment like **AB 1776** has been tried before. Since 2020, New York has considered the Twenty-First Century Antitrust Act, which is a broad expansion of New York's antitrust law, but is actually narrower than **AB 1776** in that the bill does have some market share thresholds and relies on some established antitrust standards. But the bill has failed every year in the New York Legislature due to concerns about its impact on small business and the uncertainty it creates. Those same concerns abound with **AB 1776**.

Competition thrives – and consumers, workers, families and economies flourish – when there are well-defined guardrails of what is legal competition and what may be anticompetitive, making it easier, less expensive, and less risky to do business. There are few better examples of this than the California economy, which has grown to the fourth-largest in the world under California's existing antitrust regime. **AB 1776**, however, lacks the direction and guidance necessary to inform courts, businesses and regulators. Therefore, because the bill imposes significant liability on businesses for failing to comply with overbroad, vague, and onerous requirements relating to standard business conduct, and because it will undoubtedly have a sweeping, chilling effect on competition among businesses across all industries as a result, we must strongly **OPPOSE** your **AB 1776 (Aguiar-Curry)** as a **COST DRIVER**. The Cartwright Act is already “broader in range and deeper in reach than the Sherman Act,” *Cianci v. Superior Court* (1985) 40 Cal.3d 903, 920, and there is simply no reason for further expansion of California law.

Sincerely,

Ben Golombek
Executive Vice President and Chief of Staff for Policy
California Chamber of Commerce

cc: Christine Aurre, Legislative Affairs Secretary, Office of the Governor
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Airlines for America, Joshua M. Saltzman
American Investment Council, Kevin Callahan, Vice President of State Government Affairs
Animal Health Institute, Gene Harrington, Senior Director, State Affairs
American Property Casualty Insurance Association, Mark Sketnan
Associated General Contractors – California, Matthew Easley
Associated General Contractors – San Diego Chapter, Matthew Easley
Association of Western Employees, Beau Biller
Athens Services, Gary Clifford - Senior Executive Vice President
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Biotechnology Innovation Organization (BIO), Brian Warren, Vice President, State Government Affairs
Brea Chamber of Commerce, Lacy Schoen, CEO and President
Building Owners and Managers Association of California (BOMA CA), Skyler Wonnacott
California Apartment Association, Embert Madison
California Asian Chamber of Commerce, Jazmine Advincula, Director of Public Policy
California Assisted Living Association, Danielle Parsons
California Association of Realtors, Sanjay Wagle
California Attractions and Parks Association, Sabrina Demayo Lockhart, Executive Director
California Bankers Association, Chris Shultz, Vice President, Government Relations
California Beer and Beverage Distributers, Anthony Samson
California Broadband & Video Association, Amanda Gualderama
California Broadcasters Association, Steve Stuck, President & CEO
California Building Industry Association (CBIA), Karim Drissi, Senior Vice President of Legislative Affairs
California Business Properties Association, Skyler Wonnacott

California Construction and Industrial Materials Association (CalCIMA), Robert Dugan, President/CEO
California Farm Bureau, Bryan Little, Senior Director, Policy Advocacy
California Fresh Fruit Association, Casey D. Creamer, President
California Food Producers, Katie Little
California Forestry Association, Matt Dias, CEO
California Fuels and Convenience Alliance, Alessandra Magnasco, Senior Director, Government Affairs
California Grocers Association, Rachael O'Brien, Vice President, Government Relations
California Hispanic Chamber of Commerce, Julian Canete, President and CEO
California Hospital Association, Kalyn Dean, Vice President, State Advocacy
California Hotel + Lodging Association, Lynn S. Mohrfeld, President & CEO
California Kidney Care Alliance, Kelli L'Heureux, Resilient Advocacy
California Land and Title Association, Anthony Helton, Executive VP
California Life Sciences, Sam Chung, Senior Vice President, Government Relations & External Affairs
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California Restaurant Association, Matt Sutton, Senior Vice President of Government Affairs & Public Policy
California Retailers Association, Jacob Brint, Legislative and Regulatory Manager
California Strawberry Commission, Rick Tomlinson, President
California Taxpayers Association (CalTax), Peter Blocker, Vice President of Policy
California Trucking Association, Nick Chiappe, Director of Government and Regulatory Affairs
California Walnut Commission, Robert Verloop, Executive Director/CEO
California's Credit Union, Robert Wilson, SVP State Government Affairs
Carlsbad Chamber of Commerce, Bret Schanzenbach, President & CEO
Chino Valley Chamber of Commerce, Zeb Welborn, President & CEO
Citrus Heights Chamber of Commerce, Sheri Merrick, Executive Director
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Elevate California, Cathy Cockrum Dean, President
Family Business Association, Robert Rivinius
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Greater Coachella Valley Chamber of Commerce, Brandon Marley, President & CEO
Greater Conejo Valley Chamber of Commerce, Danielle Borja, President/ CEO
Greater High Desert Chamber of Commerce, Mark Creffield, President/CEO
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Greater Riverside Chambers of Commerce, Nicholas Adcock, President/CEO
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Lodi Chamber of Commerce, JP Doucette, CEO & Director

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National Association of Mutual Insurance Companies, Christian Rataj, Sr. RVP-State Government Affairs
Nisei Farmers League, Manuel Cunha, Jr., President
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Oceanside Chamber of Commerce, Scott Ashton, CEO
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Tri County Chamber Alliance, John Marquez, Chair
Tulare Chamber of Commerce, Donnette Silva Carter, CEO
Upland Chamber of Commerce, Peggy Robertson, Member, Board of Directors
West Ventura County Business Alliance, Andy Conli, President & CEO
Western Growers Association, Matthew Allen, Vice President State Government Affairs
Western Plant Health Association, Renee Pinel, President/CEO
Western Wood Preservers Institute, Butch Bernhardt, Executive Director
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