CalChamber

Biotechnology Innovation Organization

California Food Producers

California Retailers Association
Consumers Economy Jobs

Biocom
California's Advocate for Life Science

California Bankers Association

California Life Sciences

CMTA

MPA

California Grocers Association

Civil Justice Association of California

California Hospital Association

SIIA

Biz Fed Los Angeles County Business Federation
Strengthening the Voice of Business Since 2008

TechNet
The voice of American innovation

IFA
International Franchise Association

Connected Commerce Council

California Business Properties Association

California Association of Realtors®

California Restaurant Association

CBIA
California Building Industry Association

CAPA
California Attractions and Parks Association

TechCA

CalTax
Representing taxpayers for 100 years

CBA
California Broadcasters Association

Bay Area Council

California Trucking Association

Elevate California

BOMA California

Associated General Contractors California

The Associated General Contractors San Diego Chapter

Western Wood Preservers Institute
Est. 1947

Association of Western Employers

ACT

Calforests
California Forestry Association

California Farm Bureau.
Standing up for all farmers and ranchers

CALA
California Assisted Living Association

California Apartment Association

ctia™

CFCA
California Fuels + Convenience Alliance

CCIA
Computer & Communications Industry Association
Open Markets. Open Systems. Open Networks.

California's Credit Unions

Housing Contractors of California

American Property Casualty Insurance Association
Insuring America apci.org

American Investment Council

CalCIMA
California Construction And Industrial Materials Association

Athens Services

wph Western Plant Health
HealthyPlants.org

California Fresh Fruit Association

California Strawberry Commission

NFL
Nisei Farmers League

African American Farmers of California

SVLG
Silicon Valley Leadership Group

Orange County Business Council

Airlines for America®
We Connect the World

West Ventura Cour Business Alliance

CalBroadband
The California Broadband & Video Association

Santa Clarita Valley Chamber of Commerce®

Los Angeles Area Chamber of Commerce

COST DRIVER

DATE: April 20, 2026

The Honorable
California State Assembly

SUBJECT: AB 1776 (AGUIAR-CURRY) COMPETE ACT: VIOLATIONS
OPPOSE/ COST DRIVER - AS AMENDED APRIL 9, 2026

The California Chamber of Commerce, and the organizations listed below, are **OPPOSED** to your **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, large and small, 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. This will lead to higher prices for consumers and businesses alike.

REJECTS OVER 100 YEARS OF LEGAL PRECEDENTS

AB 1776 amends California's Cartwright Act – which has covered "a combination…by two or more" firms since its passage in 1907 - to include prohibitions on Single-Firm conduct. Rather than adopt the same language as the federal statute that

prohibits monopolization, the bill prohibits single-firm "restraints of trade." The bill also specifically rejects antitrust guidance and standards provided by the U.S. Supreme Court as "not require[d]" under the Cartwright Act.

These are not minor tweaks to California law. Instead, **AB 1776** massively expands California antitrust law and how it may be enforced. **AB 1776** creates novel antitrust standards that have never been interpreted or analyzed by any court anywhere in the world and arguably covers common business practices that are generally viewed as good for competition and good for consumers.

These uncertainty concerns are compounded by the bill's instruction to courts that well established and longstanding federal standards for evaluating business practices, designed to distinguish between lawful and unlawful competition are not required under California law. For example, **AB 1776** rejects the economic and legal principles that assist courts in distinguishing between unlawful, below-cost pricing and lawful price cutting, calling into question business's ability to offer low prices aimed at gaining customers, which is one of the most frequently used competitive strategies, particularly among small businesses and new entrants. The bill also nullifies the commonsense rule created by the U.S. Supreme Court that a company generally has no duty to assist its rivals and a monopolist only has to do so in unique situations, potentially creating a California standard under which ***competitors are compelled to assist one another***, rather than compete with one another.

Similarly, in a transparent effort to elevate business interests over consumers, the bill states that plaintiffs suing under **AB 1776** need not show that "[t]he rivals whose ability to compete has been reduced are as efficient, or nearly as efficient, as the defendant," thereby safeguarding the business of less efficient competitors. **AB 1776** likewise disavows the notion that, in two-sided markets, courts should evaluate the competitive effects on both sides of the market, thereby ignoring the economic reality that consumers, on one side of a dual-sided market, often benefit from conduct that may harm competitors, on the other side of the market, and flipping on its head the "consumer welfare standard" that has guided courts and antitrust policy for decades. In another troubling and significant dismissal 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 must be seen for what it is: ***A plaintiffs' lawyer's wish list*** that will not only increase litigation and costs but leaves California courts with little guidance on how to deal with these complex issues. The bill's rejection of federal law is even more troubling given the California Supreme Court's repeated explanation that federal antitrust case law is "helpful" in interpreting the Cartwright Act. *State of California ex rel. Van de Kamp v. Texaco, Inc.* (1988) 46 Cal.3d 1147, 1164.

<u>RAISES COSTS FOR BUSINESSES AND CONSUMERS</u>

Under the bill, price cutting programs designed to gain loyal customers followings such as rewards programs offered by hotels and airlines, or discounts provided by pharmaceutical companies - innovation that reduces costs for consumers - 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, companies seek to out-compete their rivals by slashing prices to consumers. They introduce innovative products aimed at taking customers from outdated and inefficient competitors. 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 embraced by consumers, who flock to the competitors that offer lower prices and more innovation. But businesses that have lost the competitive race and enterprising plaintiffs' lawyers may cast these kinds of standard, unilateral business decisions as unlawful single-firm "restraints of trade" under **AB 1776**.

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? Similarly, would a small independent producer be prohibited from a current practice of exclusively licensing its movie or steaming episodic series to one streaming service or theatrical distributor?

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 on an issue of scope and complexity, no economic analysis or study shows, or even suggests, that California's existing antitrust laws are failing. No empirical or economic analysis demonstrates 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 sound economic evidence suggests that revisions to existing law are likely to benefit Californians.

CREATES LEGAL LIABILITY FOR EVERY BUSINESS IN CALIFORNIA – REGARDLESS OF SIZE

In terms of substance, **AB 1776** is deeply flawed in that it has no market share thresholds in its application. For decades, courts and economists have been aligned in the basic economic view that an individual business with a small share of the market is far less able to harm competition than businesses with large market shares. 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** not only lacks a similar threshold but specifically states that a plaintiff is not required to show that a firm "has or might achieve a market share or has market power at or above a threshold recognized under Section 2" of the Sherman Act. This means that **AB 1776** applies to all businesses regardless of their market share or the share of others in the market, which not only subjects all business to a potential lawsuit under the bill, but also creates a whole new set of compliance costs for small- and medium sized firms that they never faced under federal law. California law already provides an avenue for plaintiffs who allege competitive harm by a company that does not meet the market share threshold of federal antitrust law. As demonstrated by *Epic Games v. Apple*, California's Unfair Competition Law (UCL) enables a competitor to obtain far-reaching injunctive relief. California Supreme Court precedent allows for liability under the UCL if the defendant's conduct "threatens an incipient violation of an antitrust law or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition," and does not benefit consumers.

Another flaw in the bill is its lack of limiting principles or any meaningful guidance for courts and businesses as to what is, and 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 terms applies to single-firm conduct, and the bill makes no effort to do so. Restraints of trade have always been evaluated in terms of two or more firms agreeing to take certain actions. For example, Section 16720 of the Cartwright Act, which is expressly referenced in **AB 1776**, 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's** reference to Section 16720 calls into question the legality of these types of unilateral decisions. 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.

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 intensify 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
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Greater Coachella Valley Chamber of Commerce, Brandon Marley, President & CEO
Greater High Desert Chamber of Commerce, Mark Creffield, President/CEO
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