

## GUEST COLUMN

## SB 763: Increased penalties as a means of corporate deterrence

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Senate Bill 763, proposed in February 2025 by California Attorney General Rob Bonta and State Senator Melissa Hurtado, aims to amend the Cartwright Act by introducing stricter penalties for antitrust violations. The bill proposes several significant changes:

- Increasing corporate criminal fines from \$1 million to \$100 million per violation
- Raising individual criminal fines from \$250,000 to \$1 million per violation
- Extending felony imprisonment terms to two, three, or five years (currently one, two, or three years)
- Adding civil penalties up to \$1 million per violation, based on factors such as the nature, seriousness, and persistence of the misconduct

The bill also provides that “all moneys received by any court in payment of a fine or civil penalty imposed” will be “deposited in the Attorney General antitrust account within the General Fund of the State Treasury ... if the moneys received resulted from an action initiated and prosecuted by the Attorney General.” This will presumably provide funds to the California Department of Justice for expenditures related to carrying out criminal antitrust investigations and prosecutions. Should the bill make it through the legislative process, it will make a criminal violation under California’s Cartwright Act punishable to nearly the same extent



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as a criminal antitrust violation under the federal Sherman Act.

With this bill and the stricter penalties that it proposes, Attorney General Bonta and Senator Hurtado seek to deter anticompetitive activity in the current market and, in particular, by corporations. In unveiling the bill, Attorney General Bonta remarked, “[t]oo many wealthy corporations see penalties for breaking the law as simply the cost of doing business. SB 763 would sharpen the teeth of a century-old law by increasing penalties for those looking to illegally profit at the cost of workers, consumers, and honest businesses.” Echoing that sentiment, Senator Hurtado stated, “SB 763 ensures that violating antitrust laws comes with real consequences, not just a slap on the wrist.”

While the Attorney General’s Office has taken the position that existing penalties under the Cartwright Act are “insufficient to deter anticompetitive activity in the current market,” they neglect to address any role played by a lack of criminal enforcement. This may well be changing given statements over the last year by the California Department of Justice Antitrust Chief, indicating a renewed interest in criminal enforcement, but the Attorney General’s Office does not otherwise have a track record of vigorously enforcing the criminal provisions of the Cartwright Act and admittedly has not brought a criminal antitrust case in the last 25 years. *See Top Calif. Antitrust Atty Says Criminal Cases On The Horizon*, Law360 (Mar. 6, 2024), available at <https://www.law360.com>.

[com/articles/1810754/top-calif-antitrust-atty-says-criminal-cases-on-the-horizon](https://www.dailyjournal.com/articles/1810754/top-calif-antitrust-atty-says-criminal-cases-on-the-horizon).

Despite that enforcement history, SB 763 is consistent with recent efforts by legislators and the California Department of Justice to deter and punish corporate crime with increased penalties. In another notable example, Attorney General Bonta co-sponsored Assembly Bill 2432 in April 2024, seeking to in-

crease the maximum monetary penalties for corporations convicted of criminal offenses. In particular, AB 2432 proposed changes to the California Penal code that would increase (1) the maximum criminal fines that could be imposed on corporations to generally twice the amount taken from victims by the defendant or of the loss caused by the defendant (previously generally \$10,000 per felony), and (2) the

restitution fines for corporations to \$100,000 (previously \$10,000). While advocating for the bill, Attorney General Bonta emphasized the value of increased fines as a method of deterrence and holding corporations accountable, as well as a source of funding for crime victim service programs, which have recently faced significant federal funding cuts. Governor Gavin Newsom signed into law AB 2432 in

September 2024, and it took effect on Jan. 1, 2025.

As of March 28, 2025, SB 763 was still in the early stages of the legislative process, having been referred to the Committees on Judiciary and Public Safety. The bill's potential enactment could reshape antitrust enforcement in California, but its success will depend on various factors, including legislative approval and enforcement.