

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**S. B. No. 328**

**Senator Blessing**

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**A BILL**

To amend sections 1331.01, 1331.04, and 1331.16 and 1  
to enact sections 1331.05 and 1331.50 of the 2  
Revised Code to regulate the use of pricing 3  
algorithms. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1331.01, 1331.04, and 1331.16 be 5  
amended and sections 1331.05 and 1331.50 of the Revised Code be 6  
enacted to read as follows: 7

**Sec. 1331.01.** As used in sections 1331.01 to 1331.14 and 8  
1331.50 of the Revised Code: 9

(A) "Commercial terms" means any of the following: 10

(1) Level of service; 11

(2) Availability; 12

(3) Output, including quantities of products produced or 13  
distributed or the amount or level of service provided; 14

(4) Rebates or discounts made available. 15

(B) "Distribute," "distribution," and "distributing" 16  
include selling, licensing, providing access to, or otherwise 17

making available by any means, including through a subscription 18  
or the sale of a service. 19

(C) "Nonpublic competitor data" means nonpublic data that 20  
is derived from or otherwise provided by another person that 21  
competes in the same market as a person, or a related market. 22  
"Nonpublic competitor data" does not include information 23  
distributed, reported, or otherwise communicated in a way that 24  
does not reveal any underlying data from a competitor, such as 25  
narrative industry reports, news reports, business commentaries, 26  
or generalized industry survey results. 27

(D) "Nonpublic data" means information that is not widely 28  
available or easily accessible to the public, including 29  
information about price, commercial terms, and related products 30  
or services, regardless of whether the data is attributable to a 31  
specific competitor or anonymized. 32

(E) "Person" includes corporations, partnerships, and 33  
associations existing under or authorized by any state or 34  
territory of the United States, and solely for the purpose of 35  
the definition of division ~~(C)~~(H) of this section, a foreign 36  
governmental entity. 37

~~(B)~~(F) "Pricing algorithm" means any computational 38  
process, including a computational process derived from machine 39  
learning or other artificial intelligence techniques, that 40  
processes data to recommend or set a price or commercial term 41  
that is in or affecting commerce in this state. 42

(G) "Public office" means any state agency, public 43  
institution, political subdivision, or other organized body, 44  
office, agency, institution, or entity established by the laws 45  
of this state for the exercise of any function of government. 46

"Public office" does not include the nonprofit corporation 47  
formed under section 187.01 of the Revised Code. 48

~~(C)(1)~~ (H)(1) "Trust" is a combination of capital, skill, 49  
or acts by two or more persons for any of the following 50  
purposes: 51

(a) To create or carry out restrictions in trade or 52  
commerce; 53

(b) To limit or reduce the production, or increase or 54  
reduce the price of merchandise or a commodity; 55

(c) To prevent competition in manufacturing, making, 56  
transportation, sale, or purchase of merchandise, produce, or a 57  
commodity; 58

(d) To fix at a standard or figure, whereby its price to 59  
the public or consumer is in any manner controlled or 60  
established, an article or commodity of merchandise, produce, or 61  
commerce intended for sale, barter, use, or consumption in this 62  
state; 63

(e) To make, enter into, execute, or carry out contracts, 64  
obligations, or agreements of any kind by which they bind or 65  
have bound themselves not to sell, dispose of, or transport an 66  
article or commodity, or an article of trade, use, merchandise, 67  
commerce, or consumption below a common standard figure or fixed 68  
value, or by which they agree in any manner to keep the price of 69  
such article, commodity, or transportation at a fixed or 70  
graduated figure, or by which they shall in any manner establish 71  
or settle the price of an article, commodity, or transportation 72  
between them or themselves and others, so as directly or 73  
indirectly to preclude a free and unrestricted competition among 74  
themselves, purchasers, or consumers in the sale or 75

transportation of such article or commodity, or by which they 76  
agree to pool, combine, or directly or indirectly unite any 77  
interests which they have connected with the sale or 78  
transportation of such article or commodity, that its price 79  
might in any manner be affected; 80

(f) To refuse to buy from, sell to, or trade with any 81  
person because such person appears on a blacklist issued by, or 82  
is being boycotted by, any foreign corporate or governmental 83  
entity. 84

(2) "Trust" also means a combination of capital, skill, or 85  
acts by two or more bidders or potential bidders, or one or more 86  
bidders or potential bidders and any person affiliated with a 87  
public office, to restrain or prevent competition in the letting 88  
or awarding of any public contract in derogation of any statute, 89  
ordinance, or rule requiring the use of competitive bidding or 90  
selection in the letting or awarding of the public contract. 91

(3) "Trust," as defined in this section, does not include 92  
bargaining by a labor organization in negotiating or effecting 93  
contracts with an employer or employer group with reference to 94  
minimum payment to any member of the labor organization for any 95  
motor vehicles owned, driven, and used exclusively by such 96  
member in the performance of the member's duties of employment 97  
pursuant to a collective bargaining agreement between the labor 98  
organization and the employer or employer group. 99

(4) A trust as defined in this division is unlawful and 100  
void. 101

**Sec. 1331.04.** Every combination, contract, or agreement in 102  
the form of a trust, including any violation of section 1331.05 103  
of the Revised Code, is declared to be a conspiracy against 104

trade and illegal. No person shall engage in such conspiracy or 105  
take part therein, or aid or advise in its commission, or, as 106  
principal, manager, director, agent, servant, or employer, or in 107  
any other capacity, knowingly carry out any of the stipulations, 108  
purposes, prices, or rates, or furnish any information to assist 109  
in carrying out such purposes, or orders thereunder, or in 110  
pursuance thereof, or in any manner violate sections 1331.01 to 111  
1331.14 of the Revised Code. Each day's violation of this 112  
section is a separate offense. 113

Sec. 1331.05. (A) As used in this section, "price" means 114  
the amount of money or other thing of value, whether tangible or 115  
not, expected, required, or given in payment for any product or 116  
service, including compensation paid to an employee or 117  
independent contractor for services provided. 118

(B) No person shall use or distribute a pricing algorithm 119  
that uses, incorporates, or is trained with nonpublic competitor 120  
data. 121

(C) In any civil or criminal action or proceeding for a 122  
violation of sections 1331.01 to 1331.14 of the Revised Code, 123  
the court shall presume that the defendant entered into an 124  
agreement, contract, combination, or conspiracy against trade if 125  
the plaintiff establishes either or both of the following: 126

(1) That the defendant distributed the pricing algorithm 127  
to two or more persons and either or both of the following 128  
applies: 129

(a) The defendant intended the pricing algorithm to be 130  
used to set or recommend a price or commercial term of a product 131  
or service in the same market or a related market. 132

(b) Two or more persons used the pricing algorithm to set 133

or recommend a price or commercial term of a product or service 134  
in the same market or a related market. 135

(2) That both of the following apply: 136

(a) The defendant used the pricing algorithm to set or 137  
recommend a price or commercial term of a product or service. 138

(b) The pricing algorithm was used by another person to 139  
set or recommend a price or commercial term of a product or 140  
service in the same market or a related market. 141

(D) The presumption described in division (C) of this 142  
section does not apply to a defendant if the defendant did not 143  
develop or distribute the pricing algorithm and demonstrates, by 144  
clear and convincing evidence, that the defendant did not have 145  
actual knowledge and could not have reasonably known that the 146  
pricing algorithm used nonpublic competitor data. 147

(E) In a civil case in which the presumption described in 148  
division (C) of this section applies, any person that 149  
distributed the pricing algorithm and knew, or could reasonably 150  
have known, that the pricing algorithm would use, incorporate, 151  
or be trained with nonpublic competitor data is jointly and 152  
severally liable for any violation of sections 1331.01 to 153  
1331.14 of the Revised Code. 154

(F) Nothing in this section impairs or limits the 155  
applicability of this chapter or any other state or federal 156  
antitrust laws. 157

**Sec. 1331.16.** (A) As used in this section, "documentary 158  
material" means ~~the~~ either of the following: 159

(1) The original or any copy of any writings, drawings, 160  
graphs, charts, photographs, phonorecords, and other data 161

compilation from which intelligence, relevant to any 162  
investigation conducted to determine if any person is or has 163  
been engaged in a violation of this chapter, can be perceived 164  
with or without the use of detection devices; 165

(2) Information on the development or distribution of a 166  
pricing algorithm, including information on the person 167  
responsible for the development or distribution and how the 168  
pricing algorithm works. 169

(B) Whenever the attorney general has reasonable cause to 170  
believe that any person, as defined in section 1331.01 of the 171  
Revised Code, may be in possession, custody, or control of any 172  
documentary material or may have knowledge of any fact that is 173  
relevant to any investigation conducted to determine if any 174  
person is or has been engaged in a violation of this chapter, 175  
the attorney general or the attorney general's designated 176  
representative may issue in writing, and cause to be served upon 177  
any person or the representative or agent of the person, an 178  
investigative demand that requires the person to produce the 179  
documentary material for inspection and copying or reproduction, 180  
to answer under oath and in writing written interrogatories, or 181  
to appear and testify under oath before the attorney general or 182  
the attorney general's duly authorized representative, or that 183  
requires the person to do any combination of the three demands. 184

(C) Each investigative demand shall: 185

(1) Describe the conduct under investigation and state the 186  
provisions of law applicable thereto; 187

(2) If it is a demand for production of documentary 188  
material: 189

(a) Describe with reasonable particularity the documentary 190

material to be produced;	191
(b) Prescribe a return date that will provide a reasonable period of time within which the material may be assembled and made available for inspection and copying or reproduction;	192 193 194
(c) Identify the custodian to whom the material shall be made available.	195 196
(3) If it is a demand for answers to written interrogatories:	197 198
(a) Identify the representative of the attorney general to whom the answers shall be made;	199 200
(b) Prescribe a date by which the answers shall be presented.	201 202
(4) If it is a demand for the giving of oral testimony:	203
(a) Prescribe a date, time, and place at which oral testimony shall be taken;	204 205
(b) Identify the representative of the attorney general who shall conduct the oral examination.	206 207
(D) No investigative demand shall:	208
(1) Contain any requirement that would be unreasonable if contained in a subpoena or a subpoena duces tecum issued by a court in aid of a grand jury investigation;	209 210 211
(2) Except as provided in division (H) of this section, require any answers to written interrogatories, the giving of any oral testimony, or the production of any documentary material that would be privileged from disclosure if demanded by a subpoena or subpoena duces tecum issued by a court in aid of a grand jury investigation.	212 213 214 215 216 217



(E) Service of any investigative demand may be made and is	218
complete by doing either of the following:	219
(1) Depositing a copy of the demand in the United States	220
mails, by certified mail addressed to the person to be served at	221
<del>his</del> <u>the person's</u> principal office, place of business, or	222
residence;	223
(2) Delivering a copy of the demand to the person, or to	224
the representative or agent of the person.	225
(F) Any person who is served with a demand under this	226
section may be represented by counsel at the taking of that	227
person's testimony.	228
(G) In all respects, the taking of oral testimony,	229
answering of written interrogatories, and production of	230
documentary material under this section, except as otherwise	231
provided in this section, shall follow the procedures	232
established by the discovery provisions of the Rules of Civil	233
Procedure.	234
(H) (1) Whenever a natural person who is served with a	235
demand under this section refuses, on the basis of the person's	236
privilege against self-incrimination, to provide any oral	237
testimony, to answer any written interrogatories, or to produce	238
any documentary material, the attorney general or the attorney	239
general's designated representative may file a written request	240
with a court of common pleas, and the court, unless it finds	241
that to do so would not further the administration of justice,	242
shall compel that person to provide the oral testimony, to	243
answer the written interrogatories, or to produce the	244
documentary material if all of the following apply:	245
(a) The attorney general or the attorney general's	246

designated representative makes a written request to the court 247  
of common pleas to order the person to provide oral testimony, 248  
to answer written interrogatories, or to produce documentary 249  
material, notwithstanding ~~his~~ the person's claim of privilege; 250

(b) The written request is made to a court of common pleas 251  
in the county in which the person resides, transacts business, 252  
or is otherwise found, except that if the person transacts 253  
business in more than one county, the request shall be made in 254  
the county in which the person maintains ~~his~~ the person's 255  
principal place of business; 256

(c) The court of common pleas informs the person that by 257  
providing oral testimony, answering written interrogatories, or 258  
producing documentary material the person will receive immunity 259  
under division (H) (2) of this section. 260

(2) If, but for division (H) of this section, the person 261  
would have been privileged to withhold any oral testimony, 262  
answers to written interrogatories, or documentary material 263  
given in these proceedings and if the person complies with an 264  
order under division (H) (1) of this section that compels the 265  
person to provide testimony, answers, or material, the person 266  
shall not be prosecuted or subjected to any criminal penalty for 267  
or on account of any transaction or matter concerning which, in 268  
compliance with the order, the person provided testimony, 269  
answers, or material. 270

(3) A person granted immunity under division (H) (2) of 271  
this section may be subjected to a criminal penalty for any 272  
violation of section 2921.11, 2921.12, or 2921.13 of the Revised 273  
Code, or for contempt committed in providing oral testimony, 274  
answers to written interrogatories, or documentary material in 275  
compliance with the order. 276

(I) Within twenty days after service of an investigative demand upon any person pursuant to this section, or at any time before the compliance date specified in the demand, whichever period is shorter, the person may file in the court of common pleas in the county in which the person resides, transacts business, or is otherwise found, and serve upon the attorney general, a request for an order of the court modifying or setting aside the demand, except that if the person transacts business in more than one county, the request shall be filed in the county in which the person maintains the person's principal place of business, or in any other county that may be agreed upon by the person and the attorney general, or the attorney general's designated representative. The application shall specify each ground upon which the person relies in seeking relief. The time allowed for compliance with the demand shall be tolled during the pendency of the request in court.

(J) Whenever any person fails to fully comply with an investigative demand served upon the person pursuant to this section, the attorney general may file in the court of common pleas in the county in which the person resides, transacts business, or is otherwise found, and serve upon the person, a request for an order of the court that compels compliance with the demand, except that if the person transacts business in more than one county, the request shall be filed in the county in which the person maintains the person's principal place of business, or in any other county that may be agreed upon by the person and the attorney general, or the attorney general's designated representative. If the court finds that the noncompliance was in bad faith or for the purpose of delay, it may order the person to pay to the attorney general the reasonable expenses incurred in obtaining the order, including

attorney's fees, and may invoke the sanctions provided by Rule 308  
37 of the Rules of Civil Procedure. 309

(K) A person who obstructs an investigative demand made 310  
under this section may be liable for criminal prosecution for a 311  
violation of section 2921.13, 2921.31, or 2921.32 of the Revised 312  
Code. 313

(L) The attorney general is responsible for the custody, 314  
use, and necessary preservation of the documentary material made 315  
available pursuant to a demand and for its return as provided by 316  
this section. All documentary material, answers to written 317  
interrogatories, and transcripts of oral testimony that are 318  
provided pursuant to an investigative demand are, for purposes 319  
of section 149.43 and division (E)(2) of section 1347.08 of the 320  
Revised Code, trial preparation records, and shall be 321  
confidential and shall not be subject to disclosure, inspection, 322  
or copying except as provided in this section. Unless otherwise 323  
ordered by a court of common pleas, no documentary material, 324  
answers to written interrogatories, or transcripts of oral 325  
testimony that are provided pursuant to an investigative demand 326  
shall be available for inspection or copying by, nor shall the 327  
contents of the material, answers, or transcripts be disclosed 328  
to, any individual other than an authorized representative of 329  
the attorney general, without the consent of the person who 330  
provided the material, answers, or testimony, except that the 331  
material, answers, or testimony may be used in any grand jury 332  
investigation or, after reasonable notice to the person who 333  
provided the material, answers, or testimony, in the conduct of 334  
any case or other official proceeding involving an alleged 335  
violation of this chapter. No employee of the office of the 336  
attorney general shall purposely make available for inspection 337  
or copying documentary material, answers to written 338

interrogatories, or transcripts of oral testimony provided 339  
pursuant to an investigative demand, nor disclose the contents 340  
of the material, answers, or transcripts, except as provided by 341  
this section. 342

(M) When copies of documentary material made available 343  
pursuant to an investigative demand are no longer required for 344  
use in a pending proceeding, or, absent any pending proceeding, 345  
are no longer required in connection with the investigation for 346  
which they were demanded, or at the end of twenty-four months 347  
following the date when the material was made available, 348  
whichever is sooner, all copies of the material shall be 349  
returned, unless a request to extend the period beyond twenty- 350  
four months has been filed in the court of common pleas in which 351  
a request for an order compelling compliance pursuant to 352  
division (J) of this section could be filed. This division shall 353  
not require the return of any copies of the documentary material 354  
that have passed into the control of any court or grand jury. 355

(N) Public officers and their deputies, assistants, 356  
clerks, subordinates, and employees shall render and furnish to 357  
the attorney general, or to the attorney general's designated 358  
representatives when so requested, all information and 359  
assistance in their possession or within their power. 360

(O) When any request is filed in any court of common pleas 361  
under this section, the court shall have jurisdiction to hear 362  
and determine the matter presented and to enter any order that 363  
may be required to carry into effect the provisions of this 364  
chapter. 365

(P) Nothing contained in this section impairs the 366  
authority of the attorney general to file any complaint alleging 367  
an antitrust violation that is not described in the demand, nor 368

does this section prevent the use of any evidence, obtained 369  
through this section or otherwise, in such an action. 370

(Q) Nothing in this section impairs the authority of the 371  
attorney general or the attorney general's representatives to 372  
lay before any grand jury that is impaneled in this state any 373  
evidence, obtained through this section or otherwise, concerning 374  
any alleged violation of this chapter, to invoke the power of 375  
the courts to compel the production of any evidence before any 376  
grand jury that is impaneled in this state, or to institute any 377  
proceeding for the enforcement of any order or process that is 378  
issued in execution of such power or to punish disobedience of 379  
any such order or process by any person. 380

Sec. 1331.50. (A) As used in this section: 381

(1) "Gross receipts" has the same meaning as in section 382  
5751.01 of the Revised Code. 383

(2) "Price" has the same meaning as in section 1331.05 of 384  
the Revised Code. 385

(B) A person that owns or operates a commercial enterprise 386  
with five million dollars or more in gross receipts for the most 387  
recently completed federal taxable year, and that directly or 388  
indirectly provides a service or product that uses a pricing 389  
algorithm to recommend or set a price or commercial term, shall 390  
clearly disclose the following: 391

(1) To a customer, before the customer purchases the 392  
relevant product or service, that the price or a commercial term 393  
is set or recommended by a pricing algorithm; 394

(2) To a current or prospective employee or independent 395  
contractor, that the price or a commercial term for services 396  
rendered as an employee or independent contractor is set or 397

<u>recommended by a pricing algorithm.</u>	398
<u>(C) A disclosure required by division (B) (1) or (2) of this section shall state all of the following:</u>	399 400
<u>(1) Whether the pricing algorithm sets or recommends different prices or commercial terms for either or both of the following:</u>	401 402 403
<u>(a) Different customers seeking identical or nearly identical products or services;</u>	404 405
<u>(b) Employees or independent contractors providing substantially similar services.</u>	406 407
<u>(2) Whether the pricing algorithm was developed or distributed by a person other than the person making the disclosure;</u>	408 409 410
<u>(3) The identity of the person that developed or distributed the pricing algorithm.</u>	411 412
<u>(D) A violation of this section is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code.</u>	413 414 415
<b>Section 2.</b> That existing sections 1331.01, 1331.04, and 1331.16 of the Revised Code are hereby repealed.	416 417