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Chair Wilson, Vice Chair Lang, and Ranking Member Craig, thank you for the opportunity to testify to SB 79, legislation that seeks to regulate pricing algorithms. This was introduced at the end of the 135th General Assembly as SB 328, and is modeled on legislation introduced by U.S. Amy Klobuchar of Minnesota.

What this legislation seeks to address is algorithmic price-fixing. In the United States and Ohio, it is very much illegal for a bunch of business owners to walk into the proverbial smoke-filled room and agree not to undercut one another and keep prices as high as possible. This is as it should be because these higher prices harm the economy as a whole and prevent competition from reducing prices and spurring innovation. However, what happens when the smoke-filled room doesn't physically exist, but instead is replaced with a large database and sophisticated algorithms? Though it most certainly is *de facto* price-fixing, it may not be price-fixing *de jure*. In other words, the law is murky and in need of clarification, even though as a practical matter most people would still recognize it as price-fixing.

A very public example of what this legislation seeks to address is the business model of companies like RealPage. They are a software company that uses non-public data – a key component of this – as well as an enormous database of rental property information and sophisticated algorithms to “maximize revenue” for its clients. With a client portfolio north of 24 million units nationwide, they are able to use this combination of non-public data, operational scale, and sophisticated algorithms to ensure that rent will be higher than it otherwise would be in a competitive market. This is because entities like RealPage allow landlords to indirectly work together and operate as one extremely large landlord. This delta between a truly competitive market and a

concentrated market enables them to deliver additional profit to client landlords at the expense of renters and businesses outside of the real estate industry.

However, algorithmic price-fixing is not relegated to the real estate industry. It could very easily be applied to wages. If an enterprising software company were to use the same model, they could create a profitable business that is used to lower wages for its client businesses. Again, the combination of non-public data, operational scale, and sophisticated algorithms could achieve significant monopsony power for the business community at large, essentially allowing for them to operate as a single large employer. We mention monopsony because economists have modeled this economic arrangement before: the labor economics of a mining town.

So how does this legislation address these problems? It simply amends Ohio's Valentine Act, which is the state level analog to the Sherman Antitrust Act at the federal level, to clarify that price-fixing by an algorithm trained on non-public data is in fact price-fixing. Like the rest of the Valentine Act, violations are punishable by criminal penalties and damages. The Attorney General, county prosecutors, and private actors all may file suit.

Below we've linked numerous articles about the harm of algorithmic price-fixing. This legislation is necessary to ensure markets are free and competitive while we grapple with the many unknowns of AI technology. We thank you for the opportunity to testify and are happy to answer any questions.

References

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