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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

**H.B. 665**  
**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Cockley and Fischer

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### SUMMARY

- Makes the use and distribution of a pricing algorithm that uses, incorporates, or is trained with nonpublic competitor data a violation of the Valentine Act, Ohio's antitrust law.
- Establishes guidelines for when a court must presume the defendant entered into an agreement, contract, combination, or conspiracy against trade.
- Authorizes the Attorney General to issue investigative demands of documentary material that includes information on the development or distribution of a pricing algorithm, including information on the person responsible for the development or distribution and how the pricing algorithm works.
- Requires a person that owns or operates a commercial enterprise with \$5 million or more in gross receipts, and that provides a service or product that uses a pricing algorithm to recommend or set a price or commercial term, to clearly disclose that fact to customers, employees, and independent contractors.
- Makes the failure to provide the required disclosures a violation of the Consumer Sales Practices Act (CSPA).

### DETAILED ANALYSIS

#### Ohio Valentine Act – summary

Ohio's Valentine Act, Revised Code Chapter 1331, is the state's antitrust law, which aims to support competitive and fair competition in the marketplace. Under the Valentine Act, every combination, contract, or agreement in the form of a trust is declared to be a conspiracy against trade and is illegal.<sup>1</sup> Generally, an illegal trust, under continuing law, is the combination of capital,

<sup>1</sup> R.C. 1334.04.

skill, or acts by two or more persons that impede the competitive process, such as restrictions in trade or commerce, fixing the price of merchandise or a commodity, or limiting the production of merchandise or commodity, among other acts enumerated in the statute.<sup>2</sup> The Valentine Act can be enforced by the Attorney General, a county prosecutor, or by private parties.<sup>3</sup> Violations of the Valentine Act are punishable by forfeitures, criminal penalties, and private actions for damages.<sup>4</sup>

## **Anticompetitive use and distribution of pricing algorithms**

Under the bill, the use and distribution of a pricing algorithm that uses, incorporates, or is trained with nonpublic competitor data is a violation of the Valentine Act. “Pricing algorithm” is defined as any computational process, including one derived from machine learning or other artificial intelligence techniques, that processes data to recommend or set a price or commercial term that is in or affecting commerce in Ohio.<sup>5</sup> “Price” is defined as the amount of money or other thing of value, whether tangible or not, expected, required, or given in payment for any product or service, including compensation paid to an employee or independent contractor for services provided.<sup>6</sup> The bill specifies that it does not impair or limit the applicability of the Valentine Act or any other Ohio or federal antitrust law.<sup>7</sup>

### **Criminal and civil actions**

The bill specifies that, in any action enforcing the Valentine Act, there are two scenarios in which the court must presume that the defendant entered into an agreement, contract, combination, or conspiracy against trade:

1. ***Distribution:*** If the plaintiff establishes that the defendant distributed the pricing algorithm to two or more persons and either or both of the following applies:
  - a. The defendant intended the pricing algorithm to be used to set or recommend a price or commercial term of a product or service in the same market or a related market.
  - b. That two or more persons used the pricing algorithm to set or recommend a price or commercial term of a product or service in the same market or a related market.
2. ***Use by multiple parties:*** If the plaintiff establishes that the defendant used the pricing algorithm to set or recommend a price or commercial term of a product or service and the pricing algorithm was used by another person to set or recommend a price or commercial term of a product or service in the same market or a related market.<sup>8</sup>

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<sup>2</sup> R.C. 1331.01(H)(1).

<sup>3</sup> R.C. 1331.08 and 1331.11, not in the bill.

<sup>4</sup> R.C. 1331.03, 1331.08, and 1331.99, not in the bill.

<sup>5</sup> R.C. 1331.01(F), 1331.04, and 1331.05(B).

<sup>6</sup> R.C. 1331.05(A).

<sup>7</sup> R.C. 1331.05(F).

<sup>8</sup> R.C. 1331.05(C) and 1331.01(B).

These presumptions do not apply if the defendant did not develop or distribute the pricing algorithm and demonstrates, by clear and convincing evidence, that the defendant did not have actual knowledge and could not have reasonably known that the pricing algorithm used nonpublic competitor data.<sup>9</sup>

### **Joint and several liability under civil actions**

In a civil case in which any of the presumptions described above apply, any person that distributed the pricing algorithm and knew, or could reasonably have known, that the pricing algorithm would use, incorporate, or be trained with nonpublic competitor data is jointly and severally liable under the Valentine Act.<sup>10</sup>

### **Attorney General investigative demand for documentary material**

Under continuing law, the Attorney General has the power to issue antitrust investigative demands whenever the Attorney General has reasonable cause to believe that any person may be in possession of any documentary material, or may have knowledge of any fact, relevant to an investigation under the Valentine Act. The Attorney General or the Attorney General's designated representative may issue an investigative demand that requires the person to produce the documentary material for inspection and copying or reproduction, to answer under oath and in writing written interrogatories, or to appear and testify under oath.

Under continuing law, documentary material means the original or any copy of any writings, drawings, graphs, charts, photographs, phonorecords, and other data compilation from which intelligence, relevant to any investigation conducted to determine if any person is or has been engaged in a violation of the Valentine Act, can be perceived with or without the use of detection devices. The bill adds that documentary material also means the information on the development or distribution of a pricing algorithm, including information on the person responsible for the development or distribution and how the pricing algorithm works.<sup>11</sup>

### **Disclosures**

The bill requires that a person that owns or operates a commercial enterprise with \$5 million or more in gross receipts for the most recently completed federal taxable year, and that directly or indirectly provides a service or product that uses a pricing algorithm to recommend or set a price or commercial term, clearly disclose the following:

1. **Consumer disclosure:** Before the customer purchases the relevant product or service, that the price or a commercial term is set or recommended by a pricing algorithm.
2. **Employee disclosure:** To a current or prospective employee or independent contractor, that the price or a commercial term for services rendered as an employee or independent contractor is set or recommended by a pricing algorithm.

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<sup>9</sup> R.C. 1331.05(D).

<sup>10</sup> R.C. 1331.05(E).

<sup>11</sup> R.C. 1331.16(A)(2).

All disclosures must state whether the pricing algorithm sets or recommends different prices or commercial terms for different customers seeking identical or nearly identical products or services, or employees or independent contractors providing substantially similar services. The disclosure must also include information on whether the pricing algorithm was developed or distributed by a person other than the person making the disclosure and the identity of the person that developed or distributed the pricing algorithm.<sup>12</sup>

### **Consumer Sales Practices Act**

A violation of the disclosure requirement is an unfair and deceptive act or practice under the Consumer Sales Practices Act (CSPA). Under continuing law, the Attorney General has broad authority to enforce the CSPA, including suing for injunctive relief and civil penalties. Additionally, under the CSPA a consumer has a private right of action and can sue the supplier to rescind the transaction or to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the supplier's violation is an act or practice that has already been declared deceptive by the Attorney General or by a court, then both of the following apply:

- The consumer may sue to rescind the transaction or recover three times the amount of the consumer's actual economic damages or \$200, whichever is greater, plus an additional amount not exceeding \$5,000 in noneconomic damages.
- The Attorney General may request, and the court may impose, a civil penalty of not more than \$25,000.<sup>13</sup>

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## **HISTORY**

Action	Date
Introduced	01-29-26

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<sup>12</sup> R.C. 1331.50(A), (B), and (C).

<sup>13</sup> R.C. 1331.50(D); R.C. 1345.02, 1345.06, 1345.07, and 1345.09, not in the bill.