

As Introduced

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Representatives Cockley, Fischer

Cosponsors: Representatives Rogers, Brennan, Lett, Somani, Rader, Tims, Bryant Bailey, Jarrells, Abdullahi, Hall, D.

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

<u>making available by any means, including through a subscription</u>	18
<u>or the sale of a service.</u>	19
<u>(C) "Nonpublic competitor data" means nonpublic data that</u>	20
<u>is derived from or otherwise provided by another person that</u>	21
<u>competes in the same market as a person, or a related market.</u>	22
<u>"Nonpublic competitor data" does not include information</u>	23
<u>distributed, reported, or otherwise communicated in a way that</u>	24
<u>does not reveal any underlying data from a competitor, such as</u>	25
<u>narrative industry reports, news reports, business commentaries,</u>	26
<u>or generalized industry survey results.</u>	27
<u>(D) "Nonpublic data" means information that is not widely</u>	28
<u>available or easily accessible to the public, including</u>	29
<u>information about price, commercial terms, and related products</u>	30
<u>or services, regardless of whether the data is attributable to a</u>	31
<u>specific competitor or anonymized.</u>	32
<u>(E) "Person" includes corporations, partnerships, and</u>	33
<u>associations existing under or authorized by any state or</u>	34
<u>territory of the United States, and solely for the purpose of</u>	35
<u>the definition of division (C)-(H) of this section, a foreign</u>	36
<u>governmental entity.</u>	37
<u>(B)-(F) "Pricing algorithm" means any computational</u>	38
<u>process, including a computational process derived from machine</u>	39
<u>learning or other artificial intelligence techniques, that</u>	40
<u>processes data to recommend or set a price or commercial term</u>	41
<u>that is in or affecting commerce in this state.</u>	42
<u>(G) "Public office" means any state agency, public</u>	43
<u>institution, political subdivision, or other organized body,</u>	44
<u>office, agency, institution, or entity established by the laws</u>	45
<u>of this state for the exercise of any function of government.</u>	46

"Public office" does not include the nonprofit corporation	47
formed under section 187.01 of the Revised Code.	48
<u>(C) (1)–(H) (1)</u> "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
take part therein, or aid or advise in its commission, or, as
principal, manager, director, agent, servant, or employer, or in
any other capacity, knowingly carry out any of the stipulations,
purposes, prices, or rates, or furnish any information to assist
in carrying out such purposes, or orders thereunder, or in
pursuance thereof, or in any manner violate sections 1331.01 to
1331.14 of the Revised Code. Each day's violation of this
section is a separate offense.

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

<u>or recommend a price or commercial term of a product or service</u>	134
<u>in the same market or a related market.</u>	135
<u>(2) That both of the following apply:</u>	136
<u>(a) The defendant used the pricing algorithm to set or</u>	137
<u>recommend a price or commercial term of a product or service.</u>	138
<u>(b) The pricing algorithm was used by another person to</u>	139
<u>set or recommend a price or commercial term of a product or</u>	140
<u>service in the same market or a related market.</u>	141
<u>(D) The presumption described in division (C) of this</u>	142
<u>section does not apply to a defendant if the defendant did not</u>	143
<u>develop or distribute the pricing algorithm and demonstrates, by</u>	144
<u>clear and convincing evidence, that the defendant did not have</u>	145
<u>actual knowledge and could not have reasonably known that the</u>	146
<u>pricing algorithm used nonpublic competitor data.</u>	147
<u>(E) In a civil case in which the presumption described in</u>	148
<u>division (C) of this section applies, any person that</u>	149
<u>distributed the pricing algorithm and knew, or could reasonably</u>	150
<u>have known, that the pricing algorithm would use, incorporate,</u>	151
<u>or be trained with nonpublic competitor data is jointly and</u>	152
<u>severally liable for any violation of sections 1331.01 to</u>	153
<u>1331.14 of the Revised Code.</u>	154
<u>(F) Nothing in this section impairs or limits the</u>	155
<u>applicability of this chapter or any other state or federal</u>	156
<u>antitrust laws.</u>	157
Sec. 1331.16. (A) As used in this section, "documentary	158
<u>material" means the either of the following:</u>	159
<u>(1) The original or any copy of any writings, drawings,</u>	160
<u>graphs, charts, photographs, phonorecords, and other data</u>	161

compilation from which intelligence, relevant to any investigation conducted to determine if any person is or has been engaged in a violation of this chapter, can be perceived with or without the use of detection devices;	162 163 164 165
(2) <u>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.</u>	166 167 168 169
(B) Whenever the attorney general has reasonable cause to believe that any person, as defined in section 1331.01 of the Revised Code, may be in possession, custody, or control of any documentary material or may have knowledge of any fact that is relevant to any investigation conducted to determine if any person is or has been engaged in a violation of this chapter, the attorney general or the attorney general's designated representative may issue in writing, and cause to be served upon any person or the representative or agent of the person, 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 before the attorney general or the attorney general's duly authorized representative, or that requires the person to do any combination of the three demands.	170 171 172 173 174 175 176 177 178 179 180 181 182 183 184
(C) Each investigative demand shall:	185
(1) Describe the conduct under investigation and state the provisions of law applicable thereto;	186 187
(2) If it is a demand for production of documentary material:	188 189
(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
<u>his</u> <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. 277
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(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 293
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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
<u> (1) Whether the pricing algorithm sets or recommends different prices or commercial terms for either or both of the following:</u>	400
<u> (a) Different customers seeking identical or nearly identical products or services;</u>	401
<u> (b) Employees or independent contractors providing substantially similar services.</u>	402
<u> (2) Whether the pricing algorithm was developed or distributed by a person other than the person making the disclosure;</u>	403
<u> (3) The identity of the person that developed or distributed the pricing algorithm.</u>	404
<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>	405
Section 2. That existing sections 1331.01, 1331.04, and 1331.16 of the Revised Code are hereby repealed.	416
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