



Bill Text: CA AB2230 | 2023-2024 | Regular Session | Introduced California Assembly Bill 2230

Bill Title: Residential Housing Unfair Practices Act of 2023.

Spectrum: Partisan Bill (Democrat 1-0)

Status: (*Introduced*) 2024-03-04 - Referred to Com. on JUD. [AB2230 Detail]

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 2230

Introduced by Assembly Member Bennett

February 08, 2024

An act to amend Sections 16720, 16727, 17020, and 17022 of, and to add Section 16720.1 to, the Business and Professions Code, relating to business regulation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, as introduced, Bennett. Residential Housing Unfair Practices Act of 2023.

(1) Existing law, known as the Cartwright Act, makes every trust unlawful, against public policy, and void, subject to specified exemptions. A "trust" is defined for these purposes as a combination of capital, skill, or acts by 2 or more persons for certain designated purposes. A violation of the act is punishable as a crime.

This bill would expand the definition of "trust" under the act to specifically include the capital, skill, or acts of all affiliated persons, as defined. For purposes of the act, the bill would define an "affiliated person" to include, among others, a natural person related within the 3rd degree of consanguinity or affinity to any other person, together with other specified persons with certain ownership interests. The bill would expand the purposes for a trust under the act to include creating or carrying out restrictions in residential housing, preventing or limiting competition in development or redevelopment, construction, leasing, rental, or purchase of residential housing, among other specified acts. The bill would also define the terms "control," "geographic market," "residential housing," and "undue concentration" for purposes of the act.

Existing law makes it unlawful for a person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the state, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the state.

This bill would make it unlawful for a person to sell or lease, rent, or make a sale or contract for the lease, rental, or sale of goods, machinery, supplies, commodities, or rental housing located within this state. The bill would further make it unlawful to engage in specified related actions concerning price fixing in residential housing and would make other related changes to this provision. Because the bill would expand the scope of activities prohibited by the Cartwright Act, the violation of which is punishable as a crime, the bill would impose a state-mandated local program.

(2) Existing law, the Unfair Practices Act, makes certain business practices unlawful and regulates various businesses to, among other things, preserve and regulate competition, prohibit unfair trade practices, and regulate advertising. These unlawful acts include selling an article or product in this state at less than the cost for the purpose of injuring competitors or destroying competition. A violation of the act is punishable as a crime. Existing law defines "sell," for purposes of the act, to include selling, offering for sale, or advertising for sale.

This bill would expand the above-described definition to instead refer to "sell or lease," and would define it to include selling, offering for sale, rental, or lease, or advertising for sale, rental, or lease. The bill would also incorporate by reference the above-described definitions from the Cartwright Act. Because the bill would expand the scope of activities that are a crime under the act, the bill would impose a state-mandated local program.

The bill would include related legislative findings.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Residential Housing Unfair Practices Act of 2023.

SEC. 2. (a) The Legislature finds and declares all of the following:

- (1) Multiple studies have shown that California, and our nation as a whole, is experiencing an affordable housing crisis. Institutional buyers, with access to pools of investment capital, cutting edge technology, and linked market data, have emerged as supercompetitors for the purchase of entry-level and other residential housing, driving up prices and reducing the pool of housing available to individual residents and buyers.
- (2) California residents cannot compete with professional investors and developers in the acquisition of housing and consequently, an increasing amount of our state's housing supply is owned by investors and out-of-state residents. This leads to concern that our housing market rental rates are set by reference to the financial and capital markets that funded their acquisition and development rather than the residential housing markets where they are located and where there is unmet demand for affordable housing.
- (3) Existing housing in this state, especially in its largest cities, has become very expensive. Seven of the 10 most expensive real estate markets in the United States are in California.
- (4) California is also experiencing rapid year-over-year rent growth with three cities in the state having had overall rent growth of 10 percent or more year over year. Thirty-three of the United States cities with the highest rents are in California. Despite this growth in California rental rates, approvals for new residential units have been disproportionately at the higher end of the luxury market. Unfortunately, even when new units are completed, they retain stubbornly high rental asking rates despite high vacancies.
- (5) While the housing crisis has particularly exacerbated the need for affordable homes at prices below capital market rates, many of the newly constructed units are responsive only to the investment markets and not to the affordable housing or rental markets.
- (6) The Legislature previously has declared a statewide housing emergency to be in effect until January 1, 2030.

(b) It is the intent of the Legislature, in enacting the Residential Housing Unfair Practices Act of 2023, to do both of the following:

- (1) Bring residential housing within the purview of the Cartwright Act, the Unfair Practices Act, and the Unfair Competition Law to prevent market manipulation of housing prices and supply during the period of the previously declared statewide housing emergency.
- (2) Ensure that residential housing is developed and managed to be responsive to the needs, demands, and pricing affordable to residents of our state and not to the needs, demands, and pricing desired by nonresident investors or speculators.

SEC. 3. Section 16720 of the Business and Professions Code is amended to read:

16720. A trust is a combination of capital, skill or acts by two or more ~~persons~~ *persons, including all affiliated persons*, for any of the following purposes:

- (a) To create or carry out restrictions in ~~trade or commerce~~ *trade, commerce, or residential housing*.
- (b) To limit or reduce the ~~production~~ *production of*, or increase the price ~~of merchandise or of~~ *of, merchandise*, any ~~commodity~~ *commodity, or any residential housing*.

(c) To prevent *or limit* competition in manufacturing, *development or redevelopment, construction*, making, transportation, ~~sale sale, leasing, rental~~ or purchase of merchandise, produce or any ~~commodity~~ *commodity, or any residential housing*.

(d) To fix at any standard or figure, whereby ~~its the~~ price to the public or consumer shall be in any manner controlled or established, *for (1) any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption consumption in this state, or (2) any residential housing intended for sale, rental, lease, or occupancy* in this ~~State~~ *state*.

(e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following:

(1) Bind themselves not to sell, dispose ~~of of~~, or ~~transport~~ *transport, lease, or rent* any article or any commodity or any article of trade, use, merchandise, ~~commerce or consumption~~ *commerce, consumption, or any residential housing* below a common standard figure, or fixed value.

(2) Agree in any manner to keep the price of such article, ~~commodity or transportation~~ *commodity, transportation, or residential housing* at a fixed or graduated figure.

(3) Establish or settle the price of any article, ~~commodity or transportation~~ *commodity, transportation, or residential housing* between them or themselves and others, ~~so as to~~ directly or indirectly ~~to~~ preclude a free and unrestricted competition among themselves, or any ~~purchasers~~ *purchasers, developers, tenants*, or consumers in the ~~sale sale, development, rental, leasing~~, or transportation of any such ~~article~~ *article, residential housing*, or commodity.

(4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the ~~sale sale, development, lease, rental~~ or transportation of any such ~~article~~ *article, residential housing*, or commodity, that its price might in any manner be affected.

SEC. 4. Section 16720.1 is added to the Business and Professions Code, to read:

16720.1. For purposes of this chapter:

(a) "Affiliated person" means all of the following:

(1) Any natural person related within the third degree of consanguinity or affinity to any other person, together with each such person's affiliated persons under paragraph (2) or (3) of this subdivision.

(2) Any officer, director, general partner, managing member, or shareholder with a 20 percent or more interest in a person, as defined in Section 16702.

(3) Any person that shares direct or indirect common ownership, common beneficial interests, or common control of 20 percent or more by any person or group of persons that are affiliated persons under paragraph (1) or (2) of this subdivision.

(b) "Control" means the direct or indirect power to direct or cause the direction of the management or policies of any person or residential housing, whether through the ownership of voting securities, by contract, or otherwise, including specifically the power to set or whose approval is required to set the requested rental or sales price of residential housing or to enforce a default, evict, or foreclose upon residential housing.

(c) "Geographic market" in the context of residential housing is a census tract, ZIP Code, urbanized area as specified in the latest United States census, the geographic boundaries of any local governmental subdivision, and the area within a mile radius of a parcel.

(d) "Residential housing" means any of the following:

(1) A "housing development project" as that term is defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(2) A structure or portion of a structure occupied as, offered for occupancy as, or available to be occupied as, a dwelling, including units or portions of a unit leased, rented, or subleased to tenants, boarders, lodgers, guests, or any other person for a fee or charge.

(3) A parcel or structure for which noncommercial housing is a permitted underlying use under applicable plans and zoning regulations.

(e) "Undue concentration" means control by affiliated persons of more than 3 percent or more than 1,000 units of the residential housing in any geographic market.

SEC. 5. Section 16727 of the Business and Professions Code is amended to read:

16727. It shall be unlawful for any person to ~~lease sell or lease, rent~~, or make a sale or contract for the *lease, rental, or* sale of goods, merchandise, machinery, supplies, ~~commodities~~ *commodities, or residential housing located* for use within the ~~State~~ *state*, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, ~~agreement~~ *agreement*, or understanding that the ~~lessee~~ *lessee, tenant*, or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, *residential housing*, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for *lease, rental, or* sale or such condition, ~~agreement~~ *agreement*, or understanding may be to substantially lessen competition or tend to create a monopoly *or undue concentration* in any line of trade or commerce in any section *or in residential housing in any geographic market* of the ~~State~~ *state*.

SEC. 6. Section 17020 of the Business and Professions Code is amended to read:

17020. The definitions in *Sections 16702, 16702.1 and* this article shall be used in construing this chapter.

SEC. 7. Section 17022 of the Business and Professions Code is amended to read:

17022. ~~"Sell"~~ "Sell or lease" includes selling, offering for ~~sale~~ *sale, rental, or lease*, or advertising for ~~sale~~ *sale, rental, or lease*.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.