



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 157, S.D. 1, RELATING TO ANTITRUST.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Wednesday, February 26, 2025 **TIME:** 10:05 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Rodney I. Kimura,
Deputy Attorney General, at 808-586-1180)

Chairs Rhoads and Dela Cruz and Members of the Committees:

The Department of the Attorney General (Department) opposes this bill and provides the following comments.

The stated purpose in section 1 of this bill is to prevent "artificially inflated rental prices" by prohibiting the use of "algorithmic price setting" in the setting of rents. Page 2, lines 6-8. Section 2 of the bill contains the main substantive provisions and includes wording on three violations, a subsection relating to a civil antitrust action, and definitions. However, this section does not reference or define "algorithmic price setting" nor explain what constitutes "artificially inflated rental prices."

An algorithm is a set of instructions or steps for solving a problem, typically a mathematical problem. In the context of rent setting, an algorithm can be used to determine rent by mental calculation, hand calculation, or by a calculator or a computer. Rent setting as a mathematical exercise using an algorithm is not in and of itself an illegal activity but one necessary to enable property owners to accurately compute a rent amount to ensure that it covers fixed and variable expenses such as mortgage expenses, association fees, utility costs, insurance premiums, reserve assessments, and property taxes, including associated adjustments.

The first proposed violation in the new section 480- (a)(1), Hawaii Revised Statutes (HRS), would prohibit a property owner or its agent from retaining the services

of a coordinator who could be a property manager acting as a coordinator. Page 2, lines 15-18. The breadth of the wording would make it a violation for property owners to retain a coordinator/property manager for any services, including services within the definition of "coordinating function," and even make it a violation for property owners to self-perform the "coordinating function" for their benefit. See definition of "coordinator," at page 4, line 19, to page 5, line 2. Thus, the wording could prohibit a coordinator/property manager (and an owner) from providing or obtaining services such as rent collection, tenant screening, advice on market conditions and rent, and researching and using data offered by Zillow, Craigslist, UHERO publications, and advertisements. On its face, the conduct that would be made unlawful by this first violation would not normally pose antitrust concerns or be a violation of section 480-4(a), HRS, which provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in the State, or in an action of the State is illegal." Therefore, the Department recommends not creating this new violation.

The second proposed violation in the new section 480- (a)(2), HRS, would prohibit a coordinator/property manager from facilitating an agreement among property owners that restricts competition as to rental units, even if the coordinator/property manager did not perform any coordinating function. Page 2, line 19, to page 3, line 2. The term "agreement" is undefined and non-specific. Thus, it could be a violation under this bill for a coordinator/property manager to contractually secure multiple property owners under a retainer agreement to the exclusion of other property managers, or to service multiple clients with multiple rental units by using a generic rental agreement. On its face, the vague language in the second violation appears to prohibit activities and situations that would not normally raise antitrust concerns or be a violation of section 480-4(a), HRS. Further, the inclusion of the phrase "restricts competition" on page 2, line 20, does not provide a significant clarification because the signing of any agreement, even a rental agreement, legitimately restricts competition. Therefore, the Department recommends not creating this new violation.

The third violation in the new section 480- (a)(3), HRS, would prohibit two or more property owners from engaging in "consciously parallel pricing coordination." Page 3, lines 3-4. An example of "consciously parallel pricing" is when two property owners charge matching or parallel rent amounts without a meeting or explicit communications or agreements. Parallel pricing alone is not an antitrust violation or a violation of section 480-4(a), HRS. The new section 480- (e), HRS, defines the term "consciously parallel pricing coordination" as a "tacit agreement" regarding "the purchase or sale of reasonably interchangeable products or services," which phrase appears out of context given the general reference to "interchangeable products or services." Page 4, lines 4-7. Section 480- (e), HRS, basically defines a "tacit agreement" as parallel pricing, i.e., "[an agreement] to raise, lower, change, maintain, or manipulate pricing." As noted earlier, parallel pricing alone is not a violation of the antitrust laws or a violation of section 480-4(a), HRS. Therefore, the Department recommends not creating this new violation.

The new section 480- (b), HRS, at page 3, lines 5-14, does not express a violation. Instead, the wording refers to a civil antitrust action alleging that section 480-4(a), HRS, has been violated, a law that is the Hawaii counterpart to section 1 of the Sherman Act and prohibits unreasonable restraints of trade only by way of a contract, combination, or conspiracy. The need for and utility of section 480- (b), HRS, are questionable given the Department's view that the new violations created by section 480- (a), HRS, are unnecessary, and given that the current provisions in section 480-4(a), HRS, already contain a sufficient standard for proscribing illegal antitrust conduct. In addition, the provisions in section 480- (b)(1) of the bill relating to pleadings are reflected in section 480-4(a) and the associated body of federal case law. Under section 480-4, HRS, construed in accordance with judicial interpretations of section 1 of the Sherman Act per section 480-3, HRS, the complaint must allege more than conclusory allegations; it must set forth enough factual matter (taken as true) to suggest that an agreement was made. In addition, the complaint must address issues such as antitrust injury, and the relevant product market product and relevant geographic market, or face a dismissal challenge for failure to state a claim. Addressing the

relevant market issues is a complex undertaking that relies on expert economic analyses.

Section 3 of the bill, which amends section 480-16, HRS, is also unnecessary. As noted earlier, the new section 480- (b)(1) of the bill at page 3, lines 7-12, refers to a claim that section 480-4(a) has been violated, and section 480-4 is already referenced in section 480-16. It is therefore unnecessary to also refer to the new section 480- in section 480-16.

For these reasons, the Department recommends that this bill not be passed out of the Committees. Thank you for the opportunity to comment on this bill.



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KĪWILA O HAWAI‘I**

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Wednesday, February 26, 2025

10:05 am

Conference Room 211 & Videoconference
State Capitol, 415 South Beretania Street

To: COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

From: Dr. William J. Puette, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. 157 S.D. 1 Relating to Antitrust
Testimony in SUPPORT

The Hawai‘i Civil Rights Commission (HCRC) carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5. HCRC enforces laws protecting the people of Hawai‘i from discrimination in the areas of housing, employment, public accommodations, and in state and state-funded services.

The purpose of SB 157 SD 1 is to prevent artificially inflated rental prices by prohibiting the use of algorithmic price-setting in Hawaii’s rental housing market and will require the department of the attorney general to develop a public education program to inform the public about the new section and what steps a consumer can take if they suspect a violation.

HCRC is concerned about the impact that anticompetitive practices may have in perpetuating discriminatory housing outcomes in our community. Economic harms created by anticompetitive practices will adversely impact certain groups resulting in adverse impact discrimination. By preventing monopolies or near-monopolies in the housing market, antitrust protection offered by S.B. 157 S.D. 1 will help to protect against discriminatory practices in Hawaii’s already strained housing market.

HCRC supports S.B. 157 S.D. 1

February 26, 2025

The Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
State Capitol, Conference Room 211 & Videoconference

RE: Senate Bill 157, SD1, Relating to Antitrust

HEARING: Wednesday, February 26, 2025, at 10:05 a.m.

Aloha Chair Dela Cruz, Chair Rhoads, and Members of the Joint Committees:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 10,000 members. HAR provides **comments** on Senate Bill 157, SD1, which prohibits the use of algorithmic price-setting in Hawaii's rental market. Requires the Department of the Attorney General to develop and undertake a public education program regarding the prohibition. Establishes fines and penalties. Effective 7/1/2050.

In August 2024, the Department of Justice and eight states filed a lawsuit¹ against a software company called RealPage, alleging an unlawful information sharing scheme that allowed property managers to increase apartment rental prices through the use of RealPage's algorithmic pricing tools. The lawsuit, which is still ongoing, does not currently target the property managers who utilize the tool.

Property managers often rely on property management software to operate their businesses, using market trends and publicly available housing market data to guide decisions. However, they may be unaware or have no knowledge on whether the software they are using has algorithmic processes embedded in these programs.

HAR believes that this measure is premature pending the outcome of the ongoing litigation which will address this issue by determining whether there were any antitrust violations stemming from these software providers using such algorithms.

Mahalo for the opportunity to provide testimony on this measure.

¹ U.S. and Plaintiff States v. RealPage, Inc. (August 23, 2024). Case No. 1:24-cv-00710
<https://www.justice.gov/atr/media/1365471/dl>



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February 24, 2025

Senator Karl Rhoads
Chair, Judiciary
Hawaii State Capitol
415 South Beretania Street, Room 228
Honolulu, HI 96813

Senator Donovan Dela Cruz
Chair, Ways and Means
Hawaii State Capitol
415 South Beretania Street, Room 208
Honolulu, HI 96813

RE: SB 157 (Chang) – Algorithmic Pricing - Concerns

Dear Chair Rhoads, Chair Dela Cruz and Members of the Committees,

On behalf of TechNet, I'm writing to share our concerns with SB 157 (Chang) related to algorithmic pricing.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, Tallahassee, and Washington, D.C.

Using algorithms to create efficiencies isn't inherently bad. In the rental pricing context, anyone can access publicly available information about rental prices and property details to conduct a market assessment. While this process is time-consuming, it's how the industry operated for years. Algorithms streamline this work, making it much more efficient. They also provide renters, landlords, and the public with tools to better understand market trends and determine whether a unit is priced fairly—without the need to compile their own detailed market analysis. However, the use of these tools becomes problematic when algorithms collect non-public competitor data to generate recommendations.

We suggest limiting the bill to the use of non-public competitor data, rather than broadly capturing publicly available information. Several other states, including California with SB 52 (Perez), have introduced similar legislation but limited their bills to non-public competitor information.

Thank you for your consideration. If you have any questions or concerns regarding our position, please contact Jose Torres, Deputy Executive Director at jtorres@technet.org or 909-380-2783.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JT', is positioned above the typed name.

Jose Torres, MPA
Deputy Executive Director for California and the Southwest



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEES ON WAYS AND MEANS and JUDICIARY
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
Wednesday, February 26, 2025 AT 10:05 A.M.**

To The Honorable Senator Donovan M. Dela Cruz, Chair
The Honorable Senator Sharon Y. Moriwaki, Vice Chair
Members of the committee on Ways and Means
To The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the committee on Judiciary

COMMENTS ON SB157 SD1 RELATING TO ANTITRUST

The Maui Chamber of Commerce would like to offer **COMMENTS on SB157 SD1** which prevents artificially inflated rental prices by prohibiting the use of algorithmic price-setting in Hawaii's rental market.

The Chamber appreciates the focus on addressing the issue of rising rent costs across the state. We share this concern and are increasingly witnessing residents being forced to sleep in their cars due to the lack of affordable rental options. Rents on Maui were unfortunately inflated by FEMA practices, which significantly altered our housing market dynamics. While we recognize the intent behind this bill, we believe it may be challenging to enforce effectively.

We would encourage the consideration of additional proposals and innovative ideas to address the broader issue of escalating rental prices.

We thank you for the opportunity to provide **COMMENTS on SB157 SD1**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.