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BLOG

New Legislation and Enforcement Initiatives: The State Enforcement Future and Impact

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As federal antitrust enforcement continues to evolve, adjust priorities, and in some cases, stall out, states are increasingly enhancing their enforcement focus, resources, and law. In recent months, lawmakers and attorneys general across the country have introduced and advanced numerous legislative proposals, investigations, and enforcement actions aimed at reshaping the antitrust landscape. These initiatives span a wide range of priorities, such as expanding civil and criminal penalties, lowering legal thresholds for challenging anticompetitive conduct, enhancing merger oversight, and curbing the use of non-compete agreements. Notably, this surge is bipartisan, with both Democratic and Republican officials pursuing antitrust priorities—albeit often with different targets and motivations. Together, these developments suggest that state-level antitrust activity is poised to play an increasingly influential role in shaping the broader antitrust landscape.

LEGISLATIVE INITIATIVES

Expanding State Antitrust Laws

Reflecting a growing trend, multiple states have recently introduced proposed legislation aimed at expanding the scope of their antitrust laws. If enacted, these measures would broaden the scope of state-level competition enforcement and equip state attorneys general with enhanced tools to address anticompetitive conduct.

For example, in January, New York State legislators introduced the Twenty-First Century Antitrust Act (Senate Bill 335), which seeks to modernize the state's primary antitrust law, the Donnelly Act, in a few different ways. First, the bill seeks to incorporate an "abuse of dominance" standard, which would expand enforcement beyond the narrower federal "consumer welfare" approach by targeting conduct where companies with significant market power use their dominance to harm competition, regardless of direct consumer impact. Second, the bill proposes allowing prevailing plaintiffs to recover expert witness fees and litigation costs. Third, it would significantly increase maximum criminal penalties for antitrust violations—from $100,000 to $1 million for individuals and from $1 million to $100 million for corporations. As of the date of this post, the bill has passed the New York State Senate and is currently under review in the State Assembly.

Similarly, in California, Attorney General Rob Bonta has voiced support for Senate Bill 763, which would significantly strengthen enforcement under California's primary antitrust statute, the Cartwright Act. The bill proposes imposing on entities a civil penalty of up to $1 million per violation in actions brought by state enforcers. It also seeks to

enhance criminal penalties by increasing state prison sentences to terms of two, three, or five years, and raising the maximum monetary fines to $1 million for individuals and $100 million for corporations. The bill is now under consideration in the State Assembly after passing the California State Senate.

In addition to Senate Bill 763, California is pursuing broader reforms to the Cartwright Act. In 2022, the State Legislature directed the California Law Revision Commission (the CLRC) to review and recommend changes to the state's antitrust framework. Earlier this year, the CLRC preliminarily approved proposed amendments to the Cartwright Act, which include expanding the scope of the Act to regulate single-firm conduct, potentially under a "misuse of market power" standard. The CLRC is expected to submit draft legislation to the Legislature before the end of the year.

In Massachusetts, two proposed bills—Senate Bill 1038 and House Bill 1982—seek to amend the Massachusetts Antitrust Act by adopting an "abuse of dominance" standard, mirroring similar efforts in New York. The amendments would also allow successful plaintiffs to recover expert witness fees and associated expenses, which is aimed at reducing certain financial barriers for private plaintiffs to bring antitrust claims and may lead to an increasing number of antitrust complaints being filed (successful or otherwise). A hearing is currently scheduled for both bills.

And in Washington, state legislators have introduced Senate Bill 5469, targeting antitrust concerns related to pricing algorithms in the rental housing market in an effort to address rental costs. The bill prohibits landlords from using software that aggregates data from their own operations and external sources to generate rental price recommendations. The bill is currently under committee review in the State Senate.

Prioritizing Premerger Notification Requirements

States have increasingly prioritized establishing or expanding their own merger notification requirements, many of which are specifically aimed at health care transactions. These so-called "Baby HSR laws" are designed to enhance state-level antitrust scrutiny of certain transactions—often those that fall below the federal thresholds set by the Hart-Scott Rodino (HSR) Act. Winston maintains a survey of these Baby HSR laws' requirements.

Recently, many states have adopted—or are considering adopting—the Uniform Antitrust Premerger Notification Act (UAPNA), a model law published by the Uniform Law Commission in 2024. UAPNA requires parties filing federal premerger notifications under the HSR Act to also submit a copy of their HSR filing to the state attorney general if they have a sufficient nexus to the state based on sales or location. In April 2025, Washington became the first state to adopt the UAPNA with the enactment of Senate Bill 5122, establishing a general state-level premerger notification requirement for all transactions effective July 27, 2025. Colorado followed in June with the passage of Senate Bill 25-126. Notably, neither law imposes a separate state filing fee or waiting period. Several other states—including Hawaii, Nevada, Utah, and West Virginia—as well as the District of Columbia have introduced similar bills. In California, while the CLRC voted to draft legislation imposing merger approval and premerger notification requirements, Senate Bill 25, which would adopt UAPNA, recently passed the State Senate in June.

Building on this broader momentum toward enhanced state-level merger oversight, New York's proposed Twenty-First Century Antitrust Act would establish a comprehensive premerger notification program. Under the bill, parties required to report transactions under the federal HSR Act would also need to submit the same notice and supporting documentation to the New York Attorney General at the time of their federal filing. The bill also directs the Attorney General to evaluate each transaction's potential impact on labor markets, signaling a broader scope of review than traditional consumer-focused analyses.

Other states have taken targeted action in the health care sector. Earlier this year, Massachusetts Governor Maura Healey signed House Bill 5159 into law, expanding the state's existing healthcare transaction notification requirements and creating new healthcare reporting obligations. While Massachusetts already required parties to notify the state of health care transactions resulting in a "material change," the new law significantly broadens the definition of "material change" to capture a wider range of transactions and imposes ongoing post-transaction reporting requirements to enhance oversight.

Combating Non-Compete Clauses

A growing number of states have introduced bills aimed at prohibiting or significantly limiting non-compete agreements across various sectors.

Earlier this year, Ohio lawmakers introduced bipartisan Senate Bill 11, which would prohibit employers from imposing non-compete clauses or requiring workers to pay liquidated damages or other fees upon termination of employment. In New York, Senate Bill 4641—a bill that bars employers from requiring non-compete agreements from covered employees (defined to include health care professionals)—has passed the Senate and is currently under review in the Assembly. In Wyoming, Governor Mark Gordon signed Enrolled Act No. 87 into law, which voids non-compete covenants that restrict the right to receive compensation for the performance of labor. Wyoming's law went into effect on July 1, 2025, making Wyoming the fifth state to prohibit non-compete agreements. Lawmakers in New Jersey introduced Senate Bill 4385, which, with only a few exceptions, would retroactively ban all non-compete agreements and create a civil cause of action for workers affected by non-compete provisions. In addition to these states, several others—including Michigan, Tennessee, Arizona, Rhode Island, Illinois, Indiana, and Texas—have also recently introduced legislation seeking to broadly prohibit non-compete agreements.

Some states, including Arkansas, Indiana, and Colorado, have prioritized industry-specific prohibitions on non-compete agreements, passing legislation that bans non-compete covenants in employment agreements with health care workers. Other states, such as North Carolina, Kentucky, Connecticut, and Vermont have introduced legislation seeking more limited prohibitions, in which non-compete agreements are legal, but only above certain income thresholds.

Only one state has recently introduced legislation affirmatively legalizing non-compete agreements. CHOICE Act, which went into effect in July 2025, creates a presumption that "covered" noncompete agreements for employees who meet certain salary thresholds are enforceable. The Act also introduces "garden leave" provisions, whereby employees are placed on paid leave during which time they are subject to a noncompete. However, in the aggregate, state-level initiatives reflect a decentralized push by states to restrict or eliminate non-compete agreements in lieu of federal policy.

STATE ANTITRUST ENFORCEMENT

Both Democratic and Republican state attorneys general have signaled an increased interest in antitrust enforcement, albeit with differing targets and motivations.

Democratic state attorneys general have increasingly positioned themselves as a counterbalance to any perceived gaps in federal antitrust enforcement under a second Trump administration. As Minnesota Attorney General Keith Ellison stated, "We're not going to quit no matter what the federal government does. We're going to keep on going." This proactive stance echoes the actions taken by Democratic state attorneys general throughout President Trump's first administration, during which they frequently intervened in cases the federal government declined to pursue. For instance, in 2019, after the Department of Justice conditionally approved T-Mobile's merger with Sprint, a coalition of Democratic state attorneys general filed suit to block the transaction. Similarly, in 2017, California's attorney general challenged Valero Energy's proposed acquisition of two petroleum terminals after the FTC opted not to intervene, causing Valero to abandon the deal. Given current FTC Chair Andrew Ferguson's criticism of several late-term cases filed by the agency shortly before Trump's inauguration, there may soon be expanded opportunities for Democratic state attorneys general to assert their authority—both under state and federal law—in shaping the antitrust enforcement landscape.

Republican state attorneys general have remained active in antitrust enforcement, particularly in cases targeting corporate Environmental, Social, and Governance (ESG) and Diversity, Equity, and Inclusion (DEI) initiatives. Shortly after President Trump's election, Texas Attorney General Ken Paxton—joined by the Republican attorneys general of 10 other states—filed suit against three asset management firms, alleging they had formed a cartel to constrict the U.S. coal market by acquiring shares in publicly held coal producers and pressuring them to incorporate ESG goals, thereby reducing coal production. Notably, the FTC and DOJ recently issued a joint statement of interest supporting the suit, urging the court to reject the firms' motion to dismiss. Separately, Florida Attorney General James Uthmeier launched an investigation into two proxy advisory firms for purportedly anticompetitive behavior, alleging they dominate the market and may have unlawfully colluded to adopt and enforce ESG and DEI policies in violation of the Florida Antitrust Act of 1980. These developments suggest that, despite Republican control of federal antitrust

agencies, Republican state attorneys general are poised to continue playing an assertive role in enforcing competition laws—particularly where they believe corporate conduct intersects with ideological concerns.

Regardless of political affiliation, state attorneys general have continued to conduct investigations and litigate issues that directly impact their constituents. Earlier this year, the attorneys general of Illinois and Minnesota—representing states with significant agricultural sectors—joined the FTC's antitrust suit challenging high equipment repairs costs for farmers, filed days before President Trump's inauguration. In New York, Attorney General Letitia James secured summary judgment in an antitrust case brought under the state's Donnelly Act against a ski operator. And in February, a federal judge declined to dismiss an antitrust suit filed by the Arkansas Attorney General alleging pesticide manufacturers used anticompetitive rebates to keep generic alternatives from entering the market. These cases underscore the role state-level antitrust enforcement plays in addressing local economic concerns.

State antitrust enforcers may also explore increased use of criminal enforcement under their competition laws. In California, for instance, there have been no state-level criminal antitrust prosecutions in over 25 years. However, Paula Blizzard, head of antitrust enforcement at the California Department of Justice, indicated last year that the state intends to resume bringing criminal antitrust cases. More recently, she noted that because there are a "number of hurdles" in coordinating multistate criminal enforcement, California is likely to adopt a more individualized approach with a focus on in-state conduct. Reflecting growing momentum, the Bid Rigging and Criminal Enforcement Committee—part of the National Association of Attorneys General's Multistate Antitrust Task Force—recently provided training to representatives from 14 states on state-level criminal prosecution of antitrust violations. While it remains to be seen whether this signals a broader national trend, the authority to bring criminal antitrust prosecutions remains a potent tool for state attorneys general seeking to expand enforcement initiatives.

TAKEAWAYS

Recent legislative and enforcement activity makes clear that states are stepping into a more prominent position in shaping antitrust policy. State lawmakers are advancing expansive initiatives—from expanding civil and criminal penalties for antitrust violations and banning non-compete agreements, to introducing new premerger-notification requirements—that reflect a growing willingness to fill perceived gaps in federal enforcement and to tailor antitrust policy to local economic priorities. In parallel, state attorneys general across the political spectrum have increasingly signaled an interest in heightened antitrust enforcement. Companies should proactively monitor state-level legislative developments and reassess their compliance strategies to account for state-led investigations and enforcement actions—even in areas where federal scrutiny is limited or absent.

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