

Regulatory Alert

Regulatory Insights Across the States



August 2025

State Series: Antitrust and M&A

- **Expansion:** States have broadened their antitrust powers and oversight of mergers and acquisitions, introducing pre-merger notification laws, especially healthcare transactions. Anticipate merger submissions to become more complex as companies consider state submissions and reviews in addition to federal HSR filing requirements and address questions from reviewers at both federal and state levels.
- **Action:** State AGs are expanding antitrust enforcement through multiple channels including collaborating with federal antitrust agencies (e.g., FTC, DOJ), joining multistate task forces (e.g., BRACE), introducing laws and regulations (e.g., pre-merger notification, noncompete restrictions), and building capacity (e.g., establishing antitrust units, adding staff).

In 2025, states are actively pursuing antitrust legislation and regulation, both individually and collectively, seeking to take a larger role in regulating competition and scrutinizing potential mergers.

This activity includes the passage of new laws, and the consideration of others aimed at expanding state antitrust authority, particularly regarding pre-merger notification for certain transactions that may impact businesses operating within the state. The 2024 release of the Uniform Law Center's Model Law, the Uniform Antitrust Pre-Merger Notification Act, has served to prompt states to consider legislation that would set broad pre-merger notification requirements for transactions in all industries.

States are also actively continuing to consider legislation aimed at non-compete agreements even as the FTC's rule establishing a nationwide ban on non-competes is subject to legal challenge.

At the same time, state attorneys general (AGs) actions in antitrust continue and may include multistate actions.

Notable state activity in 2025 includes:

1. **Antitrust** (e.g., pre-merger notifications, non-compete agreements, algorithmic pricing)
2. **State AG Actions** (e.g., proxy voting, workers/employment, joint action)

1. Antitrust

States have taken action to introduce and/or enact expanded antitrust laws and regulations, including new broad, industry agnostic pre-merger notification requirements. Other antitrust areas that have recent activity include non-compete agreements and algorithmic pricing. Key areas and features of these bills include:

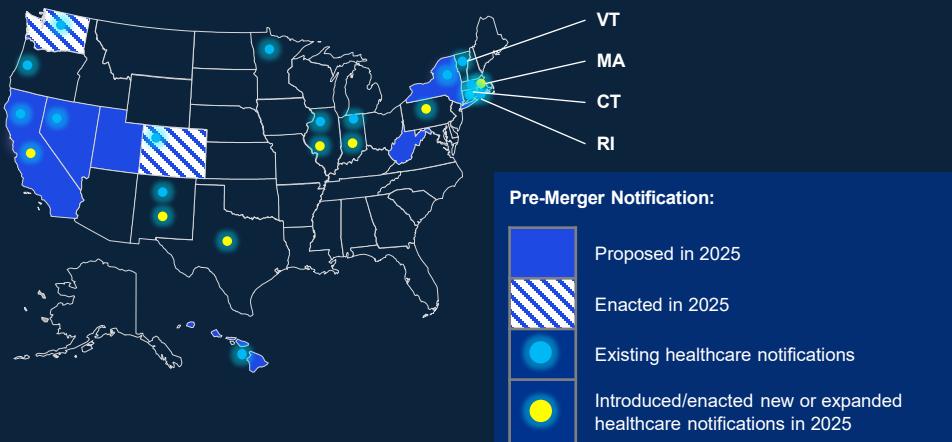
Key Features	
Key Feature	Description/Examples
Pre-Merger Notifications (Figure 1)	
Contemporaneous Notifications of HSR Reportable Transactions	<p>Based on the Model Law, "Uniform Antitrust Pre-Merger Notification Act" (e.g., CO, WA)</p> <ul style="list-style-type: none">A merging party that must file a Hart-Scott-Rodino (HSR) pre-merger notification with the federal government (filing threshold is based on the size of a transaction) must also provide notice to the state AGNotification is due to the state AG contemporaneously with the HSR filing if the party:<ul style="list-style-type: none">Has its principal place of business in the state, orHas annual net sales of the goods or services involved in the transaction derived in the state equal to or more than a minimum percentage (e.g., 20 percent) of the HSR filing thresholdNotifications are subject to the same confidentiality protections as HSR filingsCivil penalties may be assessed for failure to comply with the notification requirements. <p>Other similar legislation (e.g., NY)</p> <ul style="list-style-type: none">Requires a merging party that must file a Hart-Scott-Rodino (HSR) pre-merger notification with the federal government (threshold based on sales) to also provide notice to the state AG at the same timeApplies to all parties conducting business in the stateDirects the state AG to consider the impact of the transaction on the labor market and allows affected workers to submit comment
Expansion of Healthcare Transaction Reviews	<ul style="list-style-type: none">Expansion of existing notification requirements along with the definition of "material change" requiring notice to include significant equity investments (e.g., MA)Expansion of review requirements to include the state AG's written consent to transactions that include financing from private equity groups or hedge funds (e.g., IL)Expansion of the definition of a "transaction", 120-day pre-closing notices and review period, and the addition of whistleblower protections, (e.g., NM)
Non-Compete Agreements (Figure 2)	
Non-Compete Agreements	<ul style="list-style-type: none">Limits or bans the use of non-compete agreements for most employees (with limited exceptions), or based on specific factors such as occupation (e.g., healthcare practitioners), minimum income threshold, industry or role (e.g., "reasonable and necessary" to protect the employer) (e.g., AR, IN, TX)Establishes new types of contracts, enforceable under state law, including certain notice and review period requirements for employees/employers (e.g., FL)
Algorithmic Pricing (Figure 3)	
Algorithmic Pricing	<ul style="list-style-type: none">Prohibits the use of pricing algorithms trained on competitor data as a violation of antitrust law (e.g., CA, OH)Prohibits price setting/adjustments based on personal data/characteristicsRegulates real-time price changes based on factors such as demand or time

U.S. State Pre-Merger Notification Laws and Regulations

Figure 1

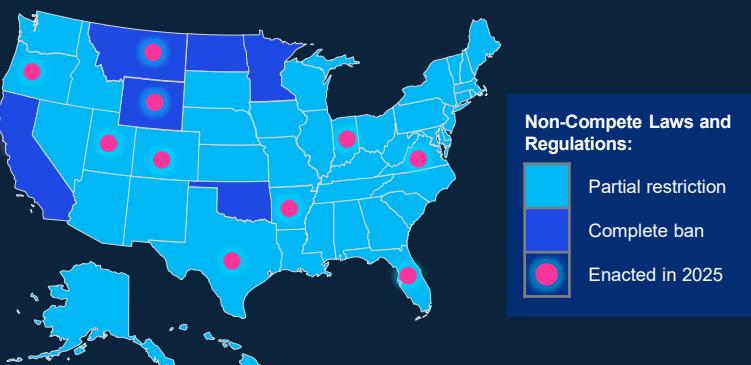
During 2025, broad pre-merger notification requirements have been introduced and/or enacted in 8 states.

Other laws seek to expand industry-specific (e.g., healthcare) pre-transaction notifications. Consolidation and investor ownership are specific areas of concern in healthcare transactions.



U.S. State Non-Compete Agreement Laws and Regulations

Figure 2

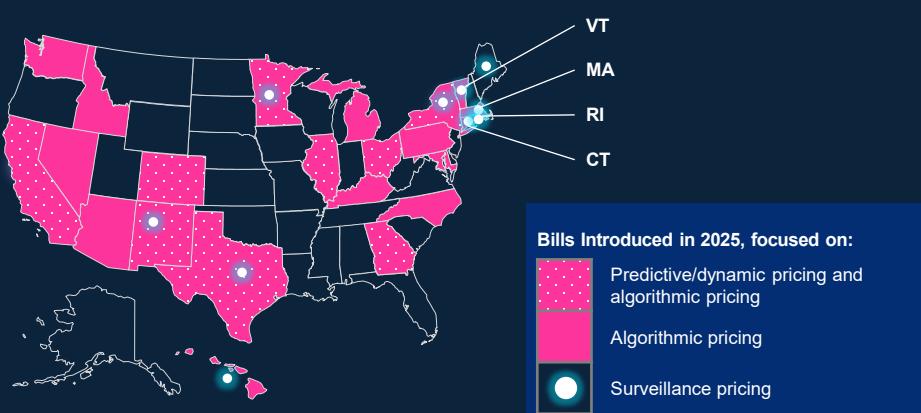


Across nearly all states, there are varying levels of laws and regulations for non-compete agreements, ranging from complete bans, partial restrictions or no significant restrictions. In 2025, nearly 90 bills were introduced to further limit non-competes across 37 states, just under 20 that looked to impose a complete ban and nearly a third of which were directed to the healthcare industry.

U.S. State Algorithmic Pricing Laws and Regulations

Figure 3

During 2025, more than 50 bills across 24 states have introduced and/or enacted legislation aimed at regulating algorithmic pricing. These bills aim to regulate AI-driven pricing tools around algorithmic pricing, surveillance pricing and dynamic pricing. Antitrust enforcers (federal agencies, state AGs) and legislators are looking for potential anti-competitive practices related to algorithmic pricing tools. †



† derived from ConsumerReports.org

2. State AG Actions

In 2025, state AGs have sought to expand their antitrust enforcement through a variety of channels including collaborating in investigations with federal antitrust agencies, participating in multistate task forces to coordinate state-level action, introducing/enacting new laws and regulations (e.g., pre-merger notifications, algorithmic pricing, criminal penalties), and building capacity (e.g., establishing antitrust units, adding staff). Key features of recent actions include:

Key Features	
Key Feature	Description/Examples
Proxy Voting	<ul style="list-style-type: none">Allegations against asset managers thought to use their proxy votes and engagement with management to reduce production within an industry, impacting competition (e.g., TX, AL, AR, WV)
Employment and Workers	<ul style="list-style-type: none">Actions against perceived anti-competitive practices in employment, such as "no-poach" and non-compete agreements (e.g., NJ, NY)
Federal Joint Action	<ul style="list-style-type: none">Joint lawsuits with the FTC against retailers for anticompetitive business practices (e.g., AZ, IL, MI, MN, WI)Partner with the DOJ to block mergers in the airline industry perceived as anticompetitive (e.g., CA, MA, MD, NJ, NY, NC)
Multistate Action	<ul style="list-style-type: none">Form a 50-state coalition to file a memorandum in federal court urging a specific settlement agreement in a case alleging anticompetitive practices in the pharmaceutical industryParticipate in the NAAG "bid-rigging and criminal enforcement group" (BRACE), which is likened to the DOJ Antitrust Division's Procurement Collusion Strike Force

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