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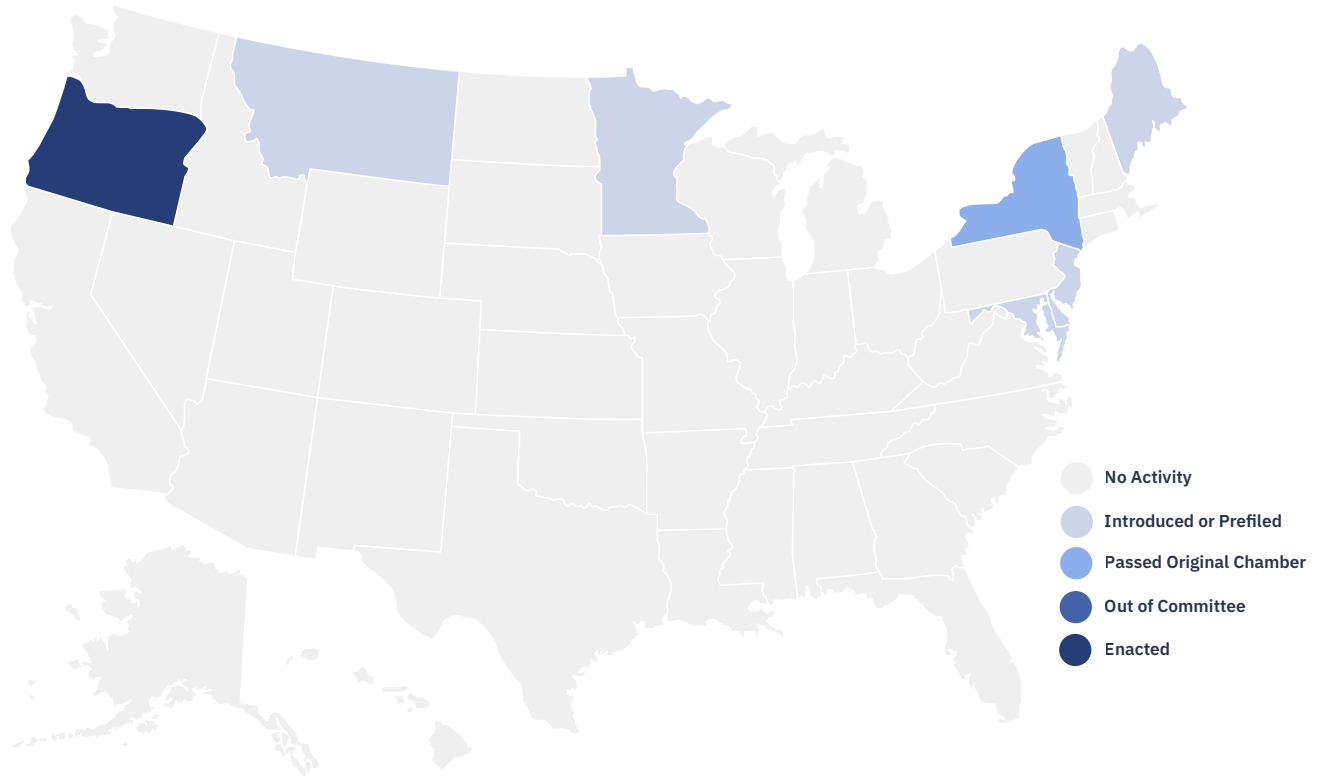


# State Landscape Competition



**2023** State  
Landscapes

# State Competition Landscape 2023



Data current as of 11/4/23. To view the latest, please visit [ccianet.org/advocacy/competition/state-legislation/](https://ccianet.org/advocacy/competition/state-legislation/)

In 2023, seven state legislatures introduced [competition-related legislation](#), continuing the trend of states attempting to tackle policy areas typically addressed at the federal level. State legislatures primarily focused their efforts in the competition space around revisions to antitrust laws, with an emphasis on monopolization/abuse of dominance practices and revising provisions as to a monopoly or monopsony. Additionally, several states considered legislation that would implement additional merger notification requirements.

Throughout the 2023 legislative session, CCIA was actively monitoring and engaged in raising concerns about these bills, focusing on how the creation of a patchwork of laws across various states would force businesses to navigate conflicting and disparate requirements, ultimately resulting in significant barriers to innovation and investment.

# Types of State Competition Measures

## Market Power

Includes legislation that aims to implement provisions reflecting a European-style approach to market power, attempts to tackle price discrimination practices, sets steep requirements for the notification of mergers and acquisitions, seeks to prevent monopolies, and creates commissions to study and debate further alterations to the law.

### Where:

- ME [L.D. 1815](#)
- MN [S.F. 1744/](#)  
[H.F. 1563](#)
- NJ [A. 5552/S. 3778](#)
- NY [S. 6748](#)

### Impact:

CCIA has serious concerns around the uncertainty of redefining market power similar to a European standard. In addition, the proposed high penalties create significant compliance challenges that could deter pro-competitive business activity and have a negative impact on the innovation ecosystem.

## Price Discrimination

This type of legislation would prohibit sellers from discriminating in price between different purchasers of commodities of like grade and quality. This type of bill seeks to prevent the diminution of competition and prevent the creation of monopolies and monopsonies in any line of commerce.

### Where:

- MN [S.F. 1070/](#)  
[H.F. 399](#)

### Impact:

Without clear definitions of what constitutes “discrimination” and what would be an illegal monopoly, this type of bill risks harming legitimate business practices and good market operators that comply with the law. Also, consumers might be prejudiced, due to businesses then not being able to provide discounts to parties in need.

## Merger and Acquisition Reporting Requirements

Requires entities conducting business in the state that embark upon mergers and acquisitions to provide a written notification of such a transaction to the Office of the Attorney General at the same time that notification is filed with the Federal Government.

### Where:

- MD [HB 776/SB 657](#)
- ME [L.D. 1815](#)

### Impact:

This type of legislation increases compliance costs for businesses. It is also redundant as it would require businesses to submit the same information to the Federal Government and to states that have this type of provision. If popularized amongst the states, bills of this type could require businesses to submit the same M&A filings up to 52 times.

## Monopoly and Monopsony

This type of legislation pertains to any actions or practices that attempt to establish a monopoly or monopsony are illegal and void. Such proposals would make it unlawful for entities in a dominant position in the conduct of any business, trade, or commerce, in any labor market, to abuse that dominant position. Establishes premerger notification requirements; and allows recoverable damages to be recovered in any action that a court may authorize as a class action.

### Where:

- MN [S.F. 1069/H.F. 398](#)
- NJ [A. 5552/](#)

### Impact:

Without clear definitions of what constitutes a “monopoly” or a “monopsony” and what would be authorized business practices, bills of this type risk harming legitimate business practices and merchants that became leaders of their sector based on competition on the merit. Thus, this would harm competition and innovation by punishing efficient actors in the marketplace.

## Key States

### California

The California Law Revision Commission is expected to conclude its study of [antitrust law](#) in early 2024. Legislation enacted in 2022 authorized the Commission to study whether the law should be revised: (1) to outlaw monopolies by single companies; (2) in the context of technology companies so that analysis of antitrust injury in that setting reflects competitive benefits such as innovation and permitting the personal freedom of individuals to start their own businesses and not solely whether such monopolies act to raise prices; and (3) in any other fashion such as approvals for mergers and acquisitions and any limitation of existing statutory exemptions to the state’s antitrust laws to promote and ensure the tangible and intangible benefits of free market competition for Californians. It is anticipated that the California legislature will take action by introducing legislation informed by the Commission’s findings from the study.

### Maine

Maine introduced antitrust legislation late into the legislative session in 2023 and, although [LD 1815](#) did not receive a hearing, it has been scheduled to be carried over to next year’s session.

### Minnesota

While competition-related legislation in Minnesota did not advance during the 2023 legislative session, these bills will carry over to the 2024 legislative session and be eligible for consideration. Given the volume of such bills and their repeated introduction, it is reasonable to anticipate that lawmakers will advance conversations on this topic.

## Key States



### New Jersey

[A. 5552/S. 3778](#) has not moved forward in the legislative process thus far this year, and although New Jersey's legislature conducts a full-year legislative session, much of the focus this fall for legislators will be on their re-election efforts (which run through November).



### New York

New York continued its efforts to attempt to pass competition legislation during the 2023 legislative session via [S. 6748](#), which focused on prohibiting actions or practices that establish or maintain a monopoly, monopsony or restraint of trade, and authorizes a class action lawsuit under the state antitrust law. This bill, which once again passed the State Senate but failed to move in the Assembly, will restart in the legislative process in 2024. Leading into 2024, there may be renewed interest in advancing the legislation in the Assembly where the legislation has historically stalled. CCIA was actively engaged in opposing this year's efforts in the legislature and will continue to do so in the lead up to and throughout the 2024 session.

## Collected Analysis



### Exits, Investment, and the Startup Experience: the role of acquisitions in the startup ecosystem

#### Engine

Engine published a report [Exits, Investment, and the Startup Experience: the role of acquisitions in the startup ecosystem](#) that details the impact of new merger control and competition policy on the innovation and startup ecosystem. The report highlights how many startups are created with the goal of being acquired and if legislation to restrict companies' ability to acquire smaller companies in their space is pursued, it would have a dramatic impact on the viability of the startup ecosystem.

This report is available at: <https://www.engine.is/news/category/engine-releases-report-on-the-role-of-acquisitions-in-the-startup-ecosystem>

# Events



Watch the event:  
<https://youtu.be/watch?v=1YB0lCfzFkI>

Read the summary:  
<https://project-disco.org/competition/icymi-antitrust-and-state-legislatures-where-are-we-headed/>

## Antitrust & State Legislatures: Where Are We Headed?

Competition issues are becoming an increasingly important focus for state legislatures, which has resulted in a recent uptick in state antitrust bills. This [panel](#) examined the legislative activity at the state level and explored the reasons behind the recent increase in state antitrust proposals. What do these bills try to achieve and how do they relate to recent federal and international proposals? What factors should state legislatures take into account when proposing antitrust bills? And, importantly, how would these bills impact consumers and businesses?