

Overview of State RPM (Complete)

BY MICHAEL A. LINDSAY *

STATE	LEGISLATION	LITIGATION
Alabama	AT: ALA. CODE § 8-10-1 (2007) (providing civil penalty where a person or corporation “engages or agrees with other persons or corporations or enters, directly or indirectly, into any combination, pool, trust, or confederation to regulate or fix the price of any article or commodity”); ALA. CODE § 8-10-3 (making it illegal for any person or corporation . . . [to] restrain or attempt to restrain, the freedom of trade or production, or [to] monopolize, or attempt to monopolize”).	H: City of Tuscaloosa v. Harcros Chems. , 158 F.3d 548, 555 n.8 (11th Cir. 1998) (finding that federal antitrust law “prescribes the terms of unlawful monopolies and restraints of trade” under Alabama law (citing <i>Ex parte Rice</i> , 67 So. 2d 825 (Ala. 1953))).
Alaska	AT: ALASKA STAT. § 45.50.562 (2007) (declaring unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).	H: Alakayak v. B.C. Packers, Ltd. , 48 P.3d 432, 448 (Alaska 2002) (holding that federal cases construing the Sherman Act § 1 “will be used as a guide” for Alaska antitrust claims). <i>See also West v. Whitney-Fidalgo Seafoods, Inc.</i> , 628 P.2d 10, 14 (Alaska 1981) (finding that Alaska legislature intended Alaska courts to look to Sherman Act for guidance).
Arizona	AT: ARIZ. REV. STAT. § 44-1402 (2007) (declaring unlawful “[a] contract, combination or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce”). H: ARIZ. REV. STAT. § 44-1412 (providing legislative intent that “courts may use as a guide interpretations given by the federal courts to comparable federal antitrust statutes” and that “[t]his article shall be applied and construed to effectuate its general purpose to make uniform the [antitrust] law” among the states).	H: Bunker’s Glass Co. v. Pilkington PLC , 47 P.3d 1119, 1126–27 (Ariz. Ct. App. 2002) (noting that Arizona appellate courts “typically” follow federal antitrust case law but that 44-1412 permits, but does not require, courts to look to federal case law), <i>aff’d</i> , 75 P.3d 99 (Ariz. 2003).
Arkansas	AT: ARK. CODE ANN. § 4-75-309 (2007) (declaring it illegal “to regulate or fix, either in this state or elsewhere, the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever”).	H: Ft. Smith Light & Traction Co. v. Kelley , 127 S.W. 975, 982 (Ark. 1910) (finding the state antitrust law did not apply to a contract with maximum resale restraint on natural gas because the law “was to prevent a combination among producing competitors to fix the prices to the detriment of consumers” and the contract would not be to the detriment of competitors).
California	AT: CAL. BUS. & PROF. CODE § 16726 (2007) (providing that every trust is “unlawful, against public policy and void”); CAL. BUS. & PROF. CODE § 16720(a) (defining a trust as a combination “[t]o create or carry out restrictions in trade or commerce”). PF: CAL. BUS. & PROF. CODE § 16720(b) (2007) (defining a trust as a combination “[t]o limit or reduce the production, or increase the price of merchandise or any commodity”); CAL. BUS. & PROF. CODE § 16720(d) (2007) (defining a trust as a combination to “fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State”); CAL. BUS. & PROF. CODE § 16720(e) (2007) (defining a trust as a combination to “agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure” or “establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity”).	H: Marin County Bd. of Realtors, Inc. v. Palsson , 549 P.2d 833, 835 (Cal. 1976) (recognizing that a “long line of California cases” has recognized that federal cases interpreting the Sherman Act are applicable to state antitrust cases because both statutes “have their roots in the common law”). PF: Chavez v. Whirlpool Corp. , 113 Cal. Rptr. 2d 175, 179–80 (Cal. Ct. App. 2001) (applying <i>Colgate</i> doctrine to hold that supplier’s unilateral exclusion of distributor did not violate Cartwright Act). <i>See also Mailand v. Burckle</i> , 572 P.2d 1142, 1147–48 (Cal. 1978) (finding resale price maintenance to be per se violation of state antitrust statute because it is a per se violation under the Sherman Act and “federal cases interpreting the Sherman Act are applicable in construing the Cartwright Act”); Harris v. Capitol Records Distributing Corp. , 413 P.2d 139, 145 (Cal. 1966) (finding that vendor’s resale price maintenance scheme violated the Cartwright Act and the Sherman Act).

Abbreviation Key: *AT* = Antitrust Provisions; *PF* = Price-Fixing Provisions/Cases; *H* = Federal Harmonization Clauses/Cases

*This chart accompanies the article by Michael A. Lindsay, *Resale Price Maintenance and the World After Leegin*, ANTITRUST, Fall 2007, at 32.

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Overview of State RPM (Complete)

STATE	LEGISLATION	LITIGATION
Colorado	<p>AT: COLO. REV. STAT. § 6-4-104 (2007) (declaring illegal every “contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>PF: COLO. REV. STAT. § 6-4-119 (instructing courts that they “shall” use “comparable” federal court decisions as guidance).</p>	<p>H: <i>See Pomerantz v. Microsoft Corp.</i>, 50 P.3d 929, 933 (Colo. Ct. App. 2002) (applying <i>Illinois Brick</i> indirect purchaser rule reasoning; recognizing legislative intent to use federal interpretations to construe state law); <i>Confre Cellars, Inc. v. Robinson</i>, CA No. 01-N-1060, 2002 U.S. Dist. LEXIS 26843 at *62 (D. Colo. 2002) (federal antitrust cases “provide substantial guidance” to courts interpreting the Colorado statute).</p>
Connecticut	<p>AT: CONN. GEN. STAT. § 35-26 (2007) (declaring unlawful “every contract, combination, or conspiracy in restraint of any part of trade or commerce”).</p> <p>PF: CONN. GEN. STAT. § 35-28(a) (declaring unlawful contracts, combinations or conspiracies that “fix[], control[] or maintain prices, rates, quotations or fees in any part of trade or commerce”).</p> <p>H: CONN. GEN. STAT. § 35-44b (courts “shall” be guided by federal interpretations).</p>	<p>H: <i>Miller’s Pond Co., LLC v. City of New London</i>, 873 A.2d 965, 978 (Conn. 2005) (Connecticut courts follow federal precedent where the federal statute parallels the Connecticut statute but not where the text of Connecticut’s “antitrust statutes, or other pertinent state law, requires the court to interpret it differently”); <i>Vacco v. Microsoft Corp.</i>, 793 A.2d 1048 (Conn. 2002) (citing CONN. GEN. STAT. § 35-44b and following <i>Illinois Brick</i>).</p> <p>PF: <i>See also Elida, Inc. v. Harmor Realty Corp.</i>, 413 A.2d 1226, 1230 (Conn. 1979) (finding purpose of CONN. GEN. STAT. § 35-28(d) was to codify per se violations of the Sherman Act).</p>
Delaware	<p>AT: Del. Code Ann. tit. 6, § 2103 (2007) (making unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).</p> <p>H: Del. Code Ann. tit. 6, § 2113 (requiring that statute “shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes”).</p>	<p>H: <i>Hammemill Paper Co. v. Palese</i>, CA No. 7128, 1983 Del. Ch. LEXIS 400 at *12 (Del. Ch. 1983) (declaring it “manifestly evident” that state antitrust laws should be construed in harmony with federal antitrust law).</p>
Florida	<p>AT: FLA. STAT. § 542.18 (2007) (declaring unlawful “[e]very contract, combination, or conspiracy in restraint of trade or commerce”).</p> <p>H: FLA. STAT. § 542.32 (describing legislative intent that “due consideration and great weight” be given to federal antitrust case law when interpreting state antitrust statute).</p>	<p>H: <i>Duck Tours Seafari, Inc. v. Key West</i>, 875 So. 2d 650, 653 (Fla. 3d Dist. Ct. App. 2004) (“Under Florida law, ‘Any activity or conduct . . . exempt from the provisions of the antitrust laws of the United States is exempt from the provisions of this chapter [542]’”); <i>Parts Depot Co., L.P. by & Through Parts Depot Co. v. Florida Auto Supply</i>, 669 So. 2d 321, 324 (Fla. 4th Dist. Ct. App. 1996) (recognizing that state courts “rely on comparable federal statutes” to construe state statute and recognizing Florida statute to cover horizontal and vertical restraints).</p>
Georgia	<p>AT: GA. CODE ANN. § 13-8-2 (2007) (declaring unenforceable “contracts in general restraint of trade”).</p>	<p>H: <i>Calhoun v. North Georgia Electric Membership Corp.</i>, 213 S.E.2d 596, 602-03 (Ga. 1975) (the test for all restraints of trade is whether the restraint is “injurious to the public interest”).</p>
Hawaii	<p>AT: HAW. REV. STAT. § 480-4(a) (2007) (declaring unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).</p> <p>PF: HAW. REV. STAT. § 480-4(b)(1) (clarifying (a), no person, partnership, trust or corporation shall “[f]ix, control, or maintain, the price of any commodity”; engage in activities “with the result of fixing, controlling or maintaining the price”; or “[f]ix, control, or maintain, any standard of quality of any commodity for the purpose or with the result of fixing, controlling, or maintaining its price”).</p> <p>H: HAW. REV. STAT. § 480-3 (requiring Hawaii antitrust statute to be construed “in accordance with judicial interpretations of similar federal antitrust statutes”).</p>	<p>H: <i>Courbat v. Dahana Ranch, Inc.</i>, 141 P.3d 427, 435 n.6 (Haw. 2006) (recognizing that federal interpretations guide the construction of Hawaii statutes “in light of conditions in Hawaii”). <i>See also Island Tobacco Co. v. R.J. Reynolds Tobacco Co.</i>, 627 P.2d 260, 268 (Haw. 1981), <i>overruled on other grounds by Robert’s Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc.</i>, 982 P.2d 853 (Haw. 1999).</p>
Idaho	<p>AT: IDAHO CODE ANN. § 48-104 (2007) (declaring unlawful “[a] contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce”).</p> <p>H: IDAHO CODE ANN. § 48-102 (providing the statute “shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes”).</p>	<p>H: <i>Afton Energy v. Idaho Power Co.</i>, 834 P.2d 850, 857 (Idaho 1992) (recognizing that federal antitrust law is traditionally “persuasive” guidance, although not binding).</p> <p>PF: <i>K. Hefner v. Caremark, Inc.</i>, 918 P.2d 595, 599 (Idaho 1996) (requiring vertical price fixing restraint to fix prices for unrelated third parties in order for a per se rule to apply).</p>

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STATE	LEGISLATION	LITIGATION
Illinois	<p>AT: 740 ILL. COMP. STAT. 10/3(2) (2007) (declaring unlawful any “contract, combination, or conspiracy with one or more other persons [to] unreasonably restrain trade or commerce”).</p> <p>PF: 740 ILL. COMP. STAT. 10/3(1)(a) (declaring unlawful any “combination or conspiracy with . . . a competitor . . . for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodity sold or bought by the parties thereto, or the fee charged or paid for any service performed or received by the parties thereto”).</p> <p>H: ILL. COMP STAT. 10/11 (“when the wording of this Act is identical or similar to that of a federal antitrust law, the courts of this state shall use the construction of the federal law by federal courts as a guide in construing this Act”).</p>	<p>H: <i>People v. Crawford Distributing Co.</i>, 291 N.E.2d 648, 652–53 (Ill. 1972) (declaring that federal antitrust precedent is a “useful guide to our court”).</p> <p>PF: <i>People v. Keystone Automotive Plating Corp.</i>, 423 N.E.2d 1246, 1251–52 (Ill. App. Ct. 1981) (reciting legislative intent of 3(1)(a) to conclude that statute does not proscribe vertical price fixing agreements between buyers and sellers); <i>Gilbert’s Ethan Allen Gallery v. Ethan Allen, Inc.</i>, 620 N.E.2d 1349, 1356 (Ill. App. Ct. 1993) (ruling that vertical price-fixing agreements are to be tested under rule of reason because “per se violations are normally agreements between competitors or agreements that would restrict competition and decrease output” and also recognizing that federal case law is instructive but not binding), <i>aff’d</i>, 162 Ill.2d 99 (1994).</p>
Indiana	<p>AT: IND. CODE ANN. § 24-1-2-1 (2007) (declaring illegal “[e]very scheme, contract, or combination in restraint of trade or commerce, or to create or carry out restrictions in trade or commerce . . .”).</p> <p>PF: IND. CODE ANN. § 24-1-2-1 (declaring illegal “[e]very scheme, contract, or combination . . . to deny or refuse to any person participation . . . or to limit or reduce the production, or increase or reduce the price of merchandise or any commodity”).</p>	<p>H: <i>Deich-Kelbler v. Bank One</i>, No. 06-3802, 2007 U.S. App. LEXIS 15419 at *10 (7th Cir. 2007) (noting practice of construing IND. CODE ANN. § 24-1-2-1 in light of federal antitrust case law); <i>Rumple v. Bloomington Hospital</i>, 422 N.E.2d 1309, 1315 (Ind. Ct. App. 1981) (recognizing that Indiana antitrust law is modeled after section 1 of the Sherman Antitrust Act and has been interpreted consistent with federal law interpreting it).</p> <p>PF: <i>Ft. Wayne Cleaners & Dyers Ass’n v. Price</i>, 137 N.E.2d 738 (Ind. Ct. App. 1956) (affirming judgment against defendant dry cleaner association for vertical minimum price fixing).</p>
Iowa	<p>AT: IOWA CODE § 553.4 (2006) (providing that “[a] contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market”).</p> <p>H: IOWA CODE § 553.2 (requiring courts to construe Iowa statute “to complement and be harmonized with the applied laws of the United States which have the same or similar purpose as this chapter” but not “in such a way as to constitute a delegation of state authority” to the federal courts).</p>	<p>H: <i>Max 100 L.C. v. Iowa Realty Co.</i>, 621 N.W.2d 178, 181–182 (Iowa 2001) (recognizing that Iowa Competition law is “patterned” after federal Sherman Act and that IOWA CODE § 553.2 “explicitly requires” state courts to consider federal case law and construe state law “uniformly with the Sherman Act”).</p>
Kansas	<p>AT: KAN. STAT. ANN. § 50-102 (2006) (denying right to form or to be in any trust as defined in § 50-101); KAN. STAT. ANN. § 50-101 (declaring unlawful any “combination of capital, skill, or acts, by two or more persons . . . [t]o create or carry out restrictions in trade or commerce . . . [t]o increase or reduce the price of merchandise, produce or commodities . . . [t]o prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce . . . [t]o fix any standard or figure, whereby such person’s price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption . . . [t]o make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which such person shall . . . agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure [or] in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity [or] agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that such person’s price in any manner is affected”); KAN. STAT. ANN. § 50-113 (declaring unlawful any combination, contract or agreement the effect of which would be “to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption”).</p>	<p>H: <i>Bergstrom v. Noah</i>, 974 P.2d 520, 531 (Kan. 1999) (finding federal antitrust case law “persuasive” but “not binding” on the interpretation of the Kansas antitrust statute because the statutes are similar only in “some respects”).</p> <p>PF: <i>Joslin v. Steffen Ice & Ice Cream Co.</i>, 54 P.2d 941, 943 (Kan. 1936) (holding that resale price maintenance scheme by ice cream wholesaler violated KAN. STAT. ANN. § 50-112).</p>

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STATE	LEGISLATION	LITIGATION
Kentucky	AT: KY. REV. STAT. ANN. § 367.175 (2007) (making unlawful “[e]very contract, combination in the form of trust and otherwise, or conspiracy, in restraint of trade or commerce”).	H: <i>Mendell v. Golden-Farley of Hopkinsville, Inc.</i> , 573 S.W. 2d 346, 349 (Ky. Ct. App. 1978) (applying federal antitrust case law to interpret Kentucky statute but noting that federal law is not binding).
Louisiana	AT: LA. REV. STAT. ANN. § 51:122 (2007) (making illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).	H: <i>Free v. Abbott Lab.</i> , 982 F. Supp. 1211, 1214 (D. La. 1997) (recognizing that “Louisiana courts routinely look to federal anti-trust jurisprudence as ‘a persuasive influence on interpretation of our own state enactments’”) (citing <i>La. Power & Light v. United Gas Pipeline</i> , 493 So. 2d 1149, 1158 (La. 1986)); <i>see also Red Diamond Supply, Inc. v. Liquid Carbonic Corp.</i> , 637 F.2d 1001, 1003, 1005 n.6 (5th Cir. 1981) (finding state antitrust statute was fashioned after federal statute and noting in dicta that vertical price restrictions are per se illegal, relying on federal law).
Maine	AT: ME. REV. STAT. ANN., tit. 10, § 1101 (2007) (declaring illegal “[e]very contract, combination in the form of trusts or otherwise, or conspiracy, in restraint of trade or commerce”).	H: <i>Davric Maine Corp. v. Rancourt</i> , 216 F.3d 143, 149 (1st Cir. 2000) (noting that the Maine antitrust statutes parallel the Sherman Act and analyzing state claims according to federal law); <i>see also Tri-State Rubbish, Inc. v. Waste Management, Inc.</i> , 998 F.2d 1073, 1081 (1st Cir. 1993) (same).
Maryland	AT: MD. CODE ANN., COM. LAW § 11-204(a)(1) (2007) (prohibiting conduct that “unreasonably restrain[s] trade or commerce” by “contract, combination, or conspiracy with one or more other persons”). H: MD. CODE ANN., COM. LAW § 11-202(a)(2) (declaring legislative intent that courts “be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters”).	H: <i>Davidson v. Microsoft Corp.</i> , 792 A.2d 336 (Md. 2002) (citing MD. COM. LAW CODE § 11-202(a)(2) when applying <i>Illinois Brick</i> indirect purchaser rule to state statute); <i>Purity Products, Inc. v. Tropicana Products, Inc.</i> , 702 F. Supp. 564, 574 (D. Md. 1988) (finding that interpretations of Maryland Antitrust Act should be guided by federal statutes).
Massachusetts	AT: MASS. GEN. LAW Sch. 93, § 4 (2007) (declaring unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”). H: MASS. GEN. LAW Sch. 93, § 1 (requiring the Massachusetts antitrust laws to be “construed in harmony with judicial interpretations of comparable federal statutes insofar as practicable”).	H: <i>Clardi v. F. Hoffmann La Roche, Ltd.</i> , 762 N.E.2d 303, 307–08 (Mass. 2002) (reconciling state antitrust law with <i>Illinois Brick Co. v. Illinois</i> , 431 U.S. 720 (1977) because MASS. GEN. LAWS ch. 93, § 1 requires state courts to harmonize state antitrust law with comparable federal law). <i>See also C. R. Bard, Inc. v. Medical Electronics Corp.</i> , 529 F. Supp. 1382, 1391 (D. Mass. 1982) (dismissing MASS. GEN. LAWS ch. 93, § 4 claim because § 4 is “directly comparable” to Sherman § 1).
Michigan	AT: MICH. COMP. LAWS § 445.772(2) (2007) (declaring unlawful any “contract, combination, or conspiracy” that is “in restraint of, or to monopolize, trade or commerce in a relevant market”). H: MICH. COMP. LAWS § 445.784 (declaring intent of legislature that “in construing all sections of this act, the courts shall give due deference to interpretations given by the federal courts to comparable antitrust statutes, including, without limitation, the doctrine of per se violations and the rule of reason”).	H: <i>Little Caesar Enters. v. Smith</i> , 895 F. Supp. 884, 898 (D. Mich. 1995) (finding no practical difference between federal and state vertical price fixing claims because “Michigan antitrust law is identical to federal law and follows the federal precedents”).

Abbreviation Key: AT = Antitrust Provisions; PF = Price-Fixing Provisions/Cases; H = Federal Harmonization Clauses/Cases

Overview of State RPM (Complete)

STATE	LEGISLATION	LITIGATION
Minnesota	<p>AT: MINN. STAT. § 325D.51 (2006) (declaring unlawful every “contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce”).</p> <p>PF: MINN. STAT. § 325D.53, subd. 1(1)(a) (declaring unlawful any “contract, combination, or conspiracy . . . for the purpose or with the effect of affecting, fixing, controlling or maintaining the market price, rate, or fee of any commodity or service”).</p>	<p>H: <i>Lorix v. Crompton Corp.</i>, 736 N.W.2d 619, 627–29 (Minn. 2007) (Minnesota generally follows federal law but rejects <i>Associated Gen'l Contractors v. Cal. State Council of Carpenters</i>, 459 U.S. 519 (1983)); <i>State by Humphrey v. Road Constructors</i>, 1996 Minn. App. LEXIS 597 at *5 (Minn. Ct. App. 1996) (recognizing that “Minnesota antitrust law is to be interpreted consistently with the federal courts’ construction of federal antitrust law”).</p> <p>PF: <i>State by Humphrey v. Alpine Air Products, Inc.</i>, 490 N.W.2d 888, 894 (Minn. Ct. App. 1992) (holding vertical minimum price fixing agreement a per se violation and recognizing that Minnesota courts consistently interpret state law in harmony with the federal courts’ construction of federal antitrust law) (citing <i>Keating v. Philip Morris, Inc.</i>, 417 N.W.2d 132, 136 (Minn. App. 1987) and <i>State v. Duluth Board of Trade</i>, 121 N.W. 395, 399 (Minn. 1909)), <i>aff’d</i>, 500 N.W.2d 788 (Minn. 1993).</p>
Mississippi	<p>AT: MISS. CODE ANN. § 75-21-1 (2007) (declaring unlawful any trust and defining trusts as a “combination, contract, understanding or agreement” that would be “inimical to public welfare and the effect of which would be “to restrain trade”).</p> <p>PF: MISS. CODE ANN. § 75-21-1 (c) (defining a trust as a combination, contract, understanding or agreement that would, among other things, “limit, increase or reduce the price of a commodity”).</p>	<p>H: <i>Futurevision Cable Systems, Inc. v. Multivision Cable TV Corp.</i>, 789 F. Supp. 760, 780 (D. Miss. 1992) (dismissing state law violations because the federal law violations failed) (citing <i>Walker v. U-Haul of Mississippi</i>, 734 F.2d 1068, 1070 n.5 (5th Cir. 1984) (treating Mississippi and federal antitrust claims as “analytically identical”)), <i>aff’d</i>, 986 F.2d 418 (5th Cir. 1993).</p>
Missouri	<p>AT: MO. REV. STAT. § 416.031 (2007) (making unlawful “[e]very contract, combination or conspiracy in restraint of trade or commerce” and defining a trust as lease or sale “of any commodity . . . for use, consumption, or resale within this state, or fix a price charged there for, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such 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 this state”).</p> <p>H: MO. REV. STAT. § 416.141 (requiring that state antitrust statute “shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes”).</p>	<p>H: <i>Hamilton v. Spencer</i>, 929 S.W.2d 762, 767 n.3 (Mo. Ct. App. 1996) (recognizing that MO. REV. STAT. § 416.141 requires Missouri antitrust laws to be harmonized with federal law and therefore citing federal precedent to limit indirect purchasers’ standing to sue.); <i>Stensto v. Sunset Memorial Park, Inc.</i>, 759 S.W.2d 261, 266 (Mo. App. 1988) (state antitrust laws should be harmonized with federal antitrust laws).</p>
Montana	<p>PF: MONT. CODE ANN. § 30-14-205 (2005) (making it unlawful for a person or persons to enter into “an agreement for the purpose of fixing the price or regulating the production of an article of commerce” or to “fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled”).</p>	<p>H: <i>Smith v. Video Lottery Consultants</i>, 858 P.2d 11, 12–13 (Mont. 1993) (recognizing that MONT. CODE ANN. § 30-14-205 is “modeled after § 1 of the Sherman Act,” but broader and therefore prohibits unilateral horizontal refusals to deal).</p>
Nebraska	<p>AT: NEB. REV. STAT. § 59-801 (2007) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>H: NEB. REV. STAT. § 59-829 (mandating that courts “shall follow the construction given to the federal law by the federal courts” for similar state provisions).</p>	<p>H: <i>Heath Consultants v. Precision Instruments</i>, 527 N.W.2d 596, 601 (Neb. 1995) (explaining that the “legal reality” is that “federal cases interpreting federal legislation which is nearly identical to the Nebraska act constitutes persuasive authority”). <i>See also Arthur v. Microsoft Corp.</i>, 676 N.W. 2d 29, 35 (Neb. 2004) (interpreting NEB. REV. STAT. § 59-829 to require courts to look to federal law unless federal interpretation would not support the state’s statutory purpose).</p> <p>PF: <i>State ex rel. Douglas v. Assoc. Grocers of Nebraska Cooperative, Inc.</i>, 332 N.W. 690, 693 (Neb. 1983) (citing federal precedent as authority that “both horizontal price-fixing among wholesalers and vertical price-fixing between wholesalers and retailers are presumed to be in restraint of trade and are per se violations” of state antitrust laws).</p>

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Nevada	<p>AT: NEV. REV. STAT. ANN. § 598A.060 (2007) (declaring unlawful four categories of activities that constitute a “contract, combination or conspiracy in restraint of trade”).</p> <p>PF: NEV. REV. STAT. ANN. § 598A.060 (enumerating unlawful activities including “price fixing, which consists of raising, depressing, fixing, pegging or stabilizing the price of any commodity or service”).</p> <p>H: NEV. REV. STAT. ANN. § 598A.050 (declaring provisions “shall be construed in harmony with prevailing judicial interpretations of the federal antitrust statutes”).</p>	<p>H: <i>Boulware v. Nevada</i>, 960 F.2d 793, 800 (9th Cir. 1992) (finding Nevada statute adopts by reference federal antitrust case law).</p>
New Hampshire	<p>AT: N.H. REV. STAT. ANN. § 356:2 (2007) (declaring unlawful “[e]very contract, combination, or conspiracy in restraint of trade” and expressly making unlawful “fixing, controlling or maintaining prices, rates, quotations or fees in any part of trade or commerce”).</p> <p>H: N.H. REV. STAT. ANN. § 356:14 (permitting courts to be “guided by interpretations of the United States’ antitrust laws”).</p>	<p>H: <i>Minuteman, LLC v. Microsoft Corp.</i>, 795 A.2d 833, 836–37 (N.H. 2002) (recognizing that it has “long been the practice” to rely on interpretation of federal antitrust legislation because the legislature “expressly encouraged a uniform construction with federal antitrust law”).</p> <p>PF: <i>Wheeler v. Mobil Chem. Co.</i>, Civ. No. 94-228-B, 1994 U.S. Dist. LEXIS 16697 at *2-3 (D.N.H. 1994) (relying on federal case law to apply rule of reason to nonprice vertical restraints under N.H. REV. STAT. ANN. § 356:2).</p>
New Jersey	<p>AT: N.J. STAT. ANN. § 56:9-3 (2007) (declaring unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>PF: N.J. STAT. § 56:4-1.1 (“Any contract provision that purports to restrain a vendee of a commodity from reselling such commodity at less than the price stipulated by the vendor or producer shall not be enforceable or actionable at law.”).</p> <p>H: N.J. STAT. ANN. § 56:9-18 (requiring that act “shall be construed in harmony” with interpretations of comparable federal antitrust statutes to effectuate uniformity among the states “insofar as practicable”).</p>	<p>H: <i>State v. Lawn King, Inc.</i>, 417 A.2d 1025, 1032–33 (N.J. 1980) (relying on “persuasive” interpretations of federal antitrust laws to hold that vertical price restraints are per se violations but that nonprice vertical restraints are subject to the rule of reason).</p>
New Mexico	<p>AT: N.M. STAT. ANN. § 57-1-1 (2007) (declaring unlawful “[e]very contract, agreement, combination or conspiracy in restraint of trade or commerce”).</p> <p>H: N.M. STAT. ANN. § 57-1-15 (requiring that act “shall be construed in harmony with judicial interpretations of the federal antitrust laws”).</p>	<p>H: <i>Smith Mach. Corp. v. Hesston, Inc.</i>, 694 P.2d 501, 505 (N.M. 1985) (recognizing that New Mexico courts look to federal antitrust cases “[in] the absence of New Mexico decisions directly on point”).</p>
New York	<p>AT: N.Y. GEN. BUS. LAW § 340 (2007) (declaring unlawful “[e]very contract, agreement, arrangement or combination . . . whereby competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained”).</p> <p>PF: N.Y. GEN. BUS. LAW § 369-a (rendering unenforceable “[a]ny contract provision that purports to restrain a vendee of a commodity from reselling such commodity at less than the price stipulated by the vendor or producer”).</p>	<p>H: <i>Sperry v. Crompton Corp.</i>, 2007 NY Slip Op 1425, 7 (N.Y. 2007) (noting that courts generally construe Donnelly Act in light of federal antitrust case law, but that it is “well settled” that New York courts will interpret the Donnelly Act differently “where State policy, differences in the statutory language or the legislative history justify such a result”); <i>Aimcee Wholesale Corp. v. Tomar Products, Inc.</i>, 237 N.E.2d 223, 225 (N.Y. 1968) (recognizing that New York antitrust law was modeled on Sherman Act).</p> <p>PF: <i>Anheuser-Busch, Inc. v. Abrams</i>, 520 N.E.2d 535, 536–37 (N.Y. 1988) (recognizing that vertical restraints are not per se illegal under New York law); <i>Dawn to Dusk, Ltd. v. Frank Brunckhorst Co.</i>, 23 A.D.2d 780, 781 (N.Y. App. Div. 1965) (applying rule of reason to vertical price and nonprice restraints).</p>
North Carolina	<p>AT: N.C. Gen. Stat. § 75-1 (2007) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p>	<p>H: <i>Madison Cablevision, Inc. v. Morganton</i>, 386 S.E.2d 200, 213 (N.C. 1989) (finding that the Sherman Act is instructive though not binding when interpreting state antitrust statute) (citing <i>Rose v. Vulcan Materials Co.</i>, 194 S.E.2d 521, 530 (N.C. 1973)). <i>See also North Carolina Steel, Inc. v. National Council on Comp. Ins.</i>, 472 S.E.2d 578, 582-83 (N.C. App. 1996) (noting extensive North Carolina history of reliance on interpretations of federal antitrust law), <i>aff’d in part and rev’d in part</i>, 496 S.E.2d 369 (N.C. 1998).</p>

Overview of State RPM (Complete)

STATE	LEGISLATION	LITIGATION
North Dakota	AT: N.D. CENT. CODE § 51-08.1-02 (2007) (making unlawful a “contract, combination, or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce in a relevant market”).	
Ohio	AT: OHIO REV. CODE ANN. § 1331.01(B)(1) (2007) (declaring unlawful any trust that is “[t]o create or carry out restrictions in trade or commerce”). PF: OHIO REV. CODE ANN. § 1331.01(B)(4) (declaring unlawful any trust that is “[t]o fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use or consumption”); OHIO REV. CODE ANN. § 1331.02 (prohibiting any person from entering into a combination, contract or agreement “with the intent to limit or fix the price or lessen the production or sale of an article or service of commerce, use, or consumption, to prevent, restrict, or diminish the manufacture or output of such article or service”).	H: <i>Johnson v. Microsoft Corp.</i> , 834 N.E.2d 791, 794–795 (Ohio 2005) (recognizing that “Ohio has long followed federal law in interpreting the Valentine Act” because the state statute is patterned after the Sherman Act). PF: See also <i>McCall Co. v. O’Neil</i> , 17 Ohio N.P. (n.s.) 17 (1914) (interpreting statute to prohibit scheme to fix prices at which goods may be resold by the reseller).
Oklahoma	AT: OKLA. STAT. tit. 79 § 203 (2007) (declaring unlawful “[e]very act, agreement, contract, or combination in the form of a trust, or otherwise, or conspiracy in restraint of trade or commerce”). H: OKLA. STAT. tit. 79 § 212 (requiring that act “shall be interpreted in a manner consistent with Federal Antitrust Law... and case law”).	
Oregon	AT: OR. REV. STAT. § 646.725 (2005) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”). H: OR. REV. STAT. § 646.715(2) (declaring legislating intent that federal court decisions construing federal antitrust law “shall be persuasive authority”).	H: <i>Jones v. City of McMinnville</i> , NO. COV/04-0047-AA, 2007 U.S. App. LEXIS 11235 at *8 (9th Cir. 2007) (finding that Oregon and federal antitrust statutes are “almost identical” Oregon courts look to federal decisions as “persuasive”) (quoting OR. REV. STAT. § 646.715 and <i>Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris, Inc.</i> , 185 F.3d 957, 963 n.4 (9th Cir. 1999)), petition for cert. filed Aug. 3, 2007.
Pennsylvania	<i>No statute—common law remedies only.</i>	PF: <i>Shuman v. Bernie’s Drug Concessions, Inc.</i> , 187 A.2d 660, 662 (Pa. 1963) (declaring vertical and horizontal price fixing arrangements—including resale price maintenance—per se illegal under the common law, citing the “inherently pernicious nature of price-fixing agreements”).
Rhode Island	AT: R.I. GEN. LAWS § 6-36-4 (2007) (declaring unlawful “[e]very contract, combination, or conspiracy in restraint of, or to monopolize, trade or commerce”). H: R.I. GEN. LAWS § 6-36-2(b) (requiring that act “shall be construed in harmony with judicial interpretations of comparable federal antitrust statutes insofar as practicable”).	H: <i>UXB Sand & Gravel, Inc. v. Rosenfeld Concrete Corp.</i> , 599 A.2d 1033, 1035 (R.I. 1991) (declaring purpose of “antitrust laws is to protect competition, not competitors”). PF: <i>Auburn News Co. v. Providence Journal Co.</i> , 504 F. Supp. 292, 300 (D.R.I. 1980) (reasoning that “vertical arrangements in general, often are competitive in effect” and therefore subject to the rule of reason), <i>rev’d on other grounds</i> , 659 F.2d 273 (1st Cir. 1981), <i>cert. denied</i> , 455 U.S. 921, 102 S. Ct. 1277, 71 L. Ed. 2d 461 (1982).
South Carolina	AT: S.C. CODE ANN. § 39-3-10 (2006) (declaring unlawful arrangements, contracts, agreements, trusts or combinations which “lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State or in the manufacture or sale of articles of domestic growth or of domestic raw material”). PF: S.C. CODE ANN. § 39-3-10 (declaring unlawful arrangements, contracts, agreements, trusts or combinations which tend to advance, reduce or control the price or the cost to the producer or consumer of any such product or article”).	H: <i>Drs. Steuer & Latham, P.A. v. Nat’l Med. Enters.</i> , 672 F. Supp. 1489, 1521 (D.S.C. 1987) (recognizing that South Carolina has “long adhered to a policy of following federal precedents” in antitrust cases), <i>aff’d</i> , 846 F.2d 70 (4th Cir. 1988). PF: <i>Walter Wood Mowing & Reaping Co. v. Greenwood Hardware Co.</i> , 55 S.E. 973, 975–76 (1906) (analyzing vertical restraint under rule of reason analysis).

Abbreviation Key: AT = Antitrust Provisions; PF = Price-Fixing Provisions/Cases; H = Federal Harmonization Clauses/Cases

Overview of State RPM (Complete)

STATE	LEGISLATION	LITIGATION
South Dakota	<p>AT: S.D. CODIFIED LAWS § 37-1-3.1 (2007) (making unlawful any “contract, combination, or conspiracy between two or more persons in restraint of trade or commerce”).</p> <p>H: S.D. CODIFIED LAWS § 37-1-22 (allowing courts to “use as a guide interpretations given by the federal or state courts to comparable antitrust statutes”).</p>	<p>H: <i>In re S.D. Microsoft Antitrust Litig.</i>, 707 N.W.2d 85, 99–100 (S.D. 2005) (giving “great weight” to federal cases interpreting the federal statute when interpreting the South Dakota statute).</p> <p>PF: <i>Assam Drug Co. v. Miller Brewing Co.</i>, 624 F. Supp. 411, 413 (D.S.D. 1985) (applying rule of reason to vertical territorial restraint and suggesting rule of reason is appropriate for all vertical restraints), <i>aff’d</i>, 798 F.2d 311 (8th Cir. 1986).</p>
Tennessee	<p>AT: TENN. CODE ANN. § 47-25-101 (2007) (declaring unlawful “[a]ll arrangements, contracts, agreements, trusts, or combinations . . . to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth or of domestic raw material).</p> <p>PF: TENN. CODE ANN. § 47-25-101 (declaring unlawful “all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend, to advance, reduce, or control the price or the cost to the producer or the consumer of any such product or article”).</p>	<p>H: <i>Freeman Indus. LLC v. Eastman Chem. Co.</i>, 172 S.W.3d 512, 519 (Tenn. 2005) (declining to follow <i>Illinois Brick</i> when interpreting state statute and noting that Tennessee does not have a statutory “harmony clause” requiring courts to interpret the state antitrust laws consistently with federal law)</p>
Texas	<p>AT: TEX. BUS. & COM. CODE § 15.05(a) (2007) (making unlawful “[e]very contract, combination, or conspiracy in restraint of trade or commerce”).</p> <p>H: TEX. BUS. & COM. CODE § 15.04 (declaring that the statute “shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with this purpose”).</p>	<p>H: <i>Star Tobacco, Inc. v. Darilek</i>, 298 F. Supp. 2d 436, 440 (D. Tex. 2003) (finding that the Texas antitrust statute is intended to be construed in accordance with federal antitrust statutes (citing <i>Abbot Laboratories, Inc. v. Segura</i>, 907 S.W.2d 503, 511 (Tex. 1995) (Gonzalez, J., concurring)).</p>
Utah	<p>AT: UTAH CODE ANN. § 76-10-914(1) (2007) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>H: UTAH CODE ANN. § 76-10-926 (declaring legislative intent that “the courts, in construing this act, will be guided by interpretations given by the federal courts to comparable federal antitrust statutes and by other state courts to comparable state antitrust statutes”).</p>	<p>H: <i>Evans v. State</i>, 963 P.2d 177, 181 (Utah 1998) (citing and following statutory mandate to look to federal and state courts for guidance when construing Utah statute).</p>
Vermont	<p>AT: VT. STAT. ANN. tit. 9, § 2453(a) (2007) (declaring unlawful “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce”).</p> <p>H: VT. STAT. ANN. tit. 9, § 2543(b) (declaring that in construing the statute, “the courts of this state will be guided by the construction of similar terms contained in Section 5(a)(1) of the Federal Trade Commission Act”).</p>	<p>H: <i>Elkins v. Microsoft Corp.</i>, 817 A.2d 9, 15–17 (Vt. 2002) (holding that “harmonization clause” requiring courts to look to regulations and decisions of the Federal Trade Commission and federal court decisions of the FTC Act does not require courts to look to other federal antitrust statutes or corresponding decisions and thus rejecting <i>Illinois Brick</i>). <i>See also State v. Heritage Realty</i>, 407 A.2d 509, 511 (Vt. 1979) (interpreting VT. STAT. ANN. tit. 9, § 2453(a) in light of federal case law to find that horizontal price fixing is per se unlawful).</p>
Virginia	<p>AT: VA. CODE ANN. § 59.1-9.5 (2007) (declaring unlawful “[e]very contract, combination or conspiracy in restraint of trade or commerce”).</p> <p>H: VA. CODE ANN. § 59.1-9.17 (declaring legislative intent that act “shall be applied and construed to effectuate its general purposes in harmony with judicial interpretation of comparable federal statutory provisions”).</p>	<p>H: <i>Williams v. First Federal Sav. & Loan Ass’n</i>, 651 F.2d 910, 930 (4th Cir. 1981) (recognizing statutory mandate to harmonize state law with federal interpretations of comparable federal antitrust statutes).</p>

Abbreviation Key: AT = Antitrust Provisions; PF = Price-Fixing Provisions/Cases; H = Federal Harmonization Clauses/Cases

Overview of State RPM (Complete)

STATE	LEGISLATION	LITIGATION
Washington	<p>AT: WASH. REV. CODE § 19.86.030 (2007) (declaring unlawful “[e]very contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>H: WASH. REV. CODE § 19.86.920 (declaring legislative intent that construction of act “be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters” but that the act “shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se”).</p>	<p>H: <i>Blewett v. Abbott Lab.</i>, 938 P.2d 842, 846 (Wash. Ct. App. 1997) (recognizing that although federal antitrust precedent is only a “guide,” “in practice Washington courts have uniformly followed federal precedent in matters described under the [Washington antitrust laws]”).</p>
West Virginia	<p>AT: W. VA. CODE § 47-18-3(a) (2007) (declaring unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>PF: W. VA. CODE § 47-18-3(b)(1) (deeming unlawful certain contracts, combinations or conspiracies including those with “the purpose or with the effect of fixing, controlling, or maintaining the market price, rate or fee of any commodity or service” or “[f]ixing, controlling, maintaining, limiting or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of fixing, controlling or maintaining the market price, rate or fee of the commodity or service”).</p> <p>H: W. VA. CODE § 47-18-16 (declaring legislative intent that statute “shall be construed liberally and in harmony with ruling judicial interpretations of comparable federal antitrust statutes”).</p>	<p>PF: <i>Kessel v. Monongalia County Gen. Hosp. Co.</i>, No. 33096, 2007 W. Va. LEXIS 52 at *27-*44 (W. Va. 2007) (holding West Virginia intended to codify existing federal per se violations when it enacted W. VA. CODE § 47-18-3 and setting forth factors for deciding whether to follow modern federal precedent when construing per se categories).</p>
Wisconsin	<p>AT: WIS. STAT. § 133.03 (2006) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).</p>	<p>H: <i>Emergency One v. Waterous Co.</i>, 23 F. Supp. 2d 959, 962, 970 (D. Wis. 1998) (noting that Wisconsin courts have “repeatedly” stated that federal antitrust law guides the interpretation of WIS. STAT. § 133.03) (citing <i>Grams v. Boss</i>, 294 N.W.2d 473, 480 (Wis. 1980)).</p> <p>PF: <i>Slowiak v. Hudson Foods, Inc.</i>, No. 91-C-737-2, 1992 U.S. Dist. LEXIS 9387, at *25-*30 (D. Wis. 1992) (holding vertical maximum price restraint lawful because there was no antitrust injury).</p>
Wyoming	<p>AT: WYO. STAT. ANN. § 40-4-101(a)(i) (2007) (prohibiting “any plan, agreement, consolidation or combination of any kind whatsoever to prevent competition or to control or influence production or prices thereof”).</p>	<p>PF: <i>Bulova Watch Co. v. Zale Jewelry Co.</i>, 371 P.2d 409, 420 (Wyo. 1962) (declining to hold that Fair Trade Law’s authorization for resale price maintenance violates the state constitution but noting that it is “certainly out of harmony with its spirit”).</p>

Abbreviation Key: *AT* = Antitrust Provisions; *PF* = Price-Fixing Provisions/Cases; *H* = Federal Harmonization Clauses/Cases