From the Prairie to the Ocean: More Developments in State RPM Law

Michael A. Lindsay

Within the first eight days of May, two state appellate courts reached directly opposite conclusions on the legality of resale price maintenance agreements (RPM) under their admittedly very different state statutes.[1] In New York, an intermediate court of appeals determined that RPM agreements are not illegal per se under New York state law, but in Kansas, the state supreme court found RPM agreements illegal per se under state law—vertical price-fixing agreements being no different from horizontal price-fixing agreements. The difference in these two outcomes can be traced largely, but not exclusively, to differences in the language of the governing state statutes. These statutory differences and the consequently different outcomes in the courts underscore the difficulties confronting a manufacturer that wants to adopt a uniform marketing model in all fifty states. These difficulties may also explain manufacturers' continuing preference for unilateral RPM policies instead of potentially illegal RPM agreements—and ironically, in the last eight days of May the business press reported on a seeming resurgence of RPM and minimum advertised price policies.[2]

Since the U.S. Supreme Court's 2007 decision in *Leegin*,[3] THE ANTITRUST SOURCE has maintained on its website a chart providing relevant state-law authorities for each of the fifty states.[4] The chart has been updated to reflect the New York and Kansas decisions as well as minor developments in other states.

■ ***Michael A. Lindsay*** *is a partner at Dorsey & Whitney LLP, where he chairs the firm's Antitrust Practice Group. He also serves as an associate editor of* Antitrust *magazine.*
Mr. Lindsay thanks Dorsey summer associate Evan Everist for his research assistance in updating the accompanying chart.

[1] The Kansas decision came down on May 4, 2012, and the New York decision on May 8, 2012.

[2] The *Wall Street Journal* report on MAP policies appeared on May 23, 2012. *See* Ann Zimmerman, *Sony, Samsung Rein In Retailers' Discounts on TVs*, WALL ST. J., May 23, 2012, *available at* http://online.wsj.com/article/SB10001424052702304791704577420383631021786.html. Others picked up on the *Wall Street Journal*'s article. *See, e.g.*, Sam Byford, *Sony and Samsung Enforcing Minimum Pricing on TVs*, THE VERGE, May 23, 2012, *available at* http://www.theverge.com/2012/5/23/3038192/sony-samsung-tv-minimum-pricing; *TV Makers Ask Retailers to Resist Discounting*, STAR TRIB., May 23, 2012, *available at* http://www.startribune.com/business/153355685.html.

[3] Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877 (2007), *overruling* Dr. Miles Med. Co. v. John D. Park & Sons, 220 U.S. 373 (1911).

[4] The updated chart is appended to this article and is also available at http://www.antitrustsource.com [under "Supplementary Materials"]. For articles explaining the chart and describing key developments since its original publication, see Michael A. Lindsay, *Resale Price Maintenance and the World After* Leegin, ANTITRUST, Fall 2007, at 1, 32, *available at* http://www.dorsey.com/files/upload/Antitrust_Lindsay_Fall07.pdf; Michael A. Lindsay, *A Tale of Two Coasts: Recent RPM Enforcement in New York and California*, ANTITRUST SOURCE, Apr. 2011 [hereinafter *A Tale of Two Coasts*], http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/apr11-lindsay_4-20f.authcheckdam.pdf; Michael A. Lindsay, *An Update on State RPM Laws Since* Leegin, ANTITRUST SOURCE, Dec. 2010, http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/Dec10_Lindsay12_21f.authcheckdam.pdf; Michael A. Lindsay, *State Resale Price Maintenance Laws After* Leegin, ANTITRUST SOURCE, Oct. 2009, http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/Oct09_Lindsay10_23f.authcheckdam.pdf [hereinafter *State Laws After* Leegin].

New York

In *People v. Tempur-Pedic International, Inc.*,[5] the New York intermediate appellate court affirmed a lower court dismissal of the New York Attorney General's complaint. Tempur-Pedic sells premium mattresses and related bedding products with visco-elastic memory foam. These products are sold primarily through specialty stores, furniture stores, and department stores,[6] although they can also be purchased directly from Tempur-Pedic for home delivery and from Internet resellers.[7] The Tempur-Pedic reseller agreement did not include any provision establishing a minimum resale price, although it did include provisions relating to minimum *advertised* price (including, for example, prohibitions on advertising rebates, gift cards, free gifts, and store credits).[8] Tempur-Pedic also adopted a *Colgate*[9] policy: Tempur-Pedic had "announce[d] a policy to suspend doing business with any retailer who does not adhere substantially to [its] suggested retail price ranges."[10] The policy was enforced through shipment suspensions if a retailer was substantially deviating from Tempur-Pedic's suggested retail prices (other than an isolated incident or a liquidation sale of discontinued merchandise). The policy included the standard disclaimers—that the policy was Tempur-Pedic's "unilateral decision" and was "not negotiable," that Tempur-Pedic "neither seeks nor will . . . accept its retailers' agreement with the policy," and that retailers may set prices at whatever level they believe to be in their best interests.[11]

Section 369-a of the New York General Business Code is entitled "Price-fixing Prohibited," but the actual text of the statute only says that a minimum RPM agreement "shall not be enforceable at law."[12] Nevertheless, the New York Attorney General alleged that Tempur-Pedic had minimum RPM agreements with its independent dealers and that these agreements were illegal under state law. The lower court dismissed the claim, and the state appealed.

In a barely two-page opinion, the appellate court affirmed the dismissal on essentially the grounds identified by the lower court. First, the appellate court held that the plain language of the statute does not make minimum RPM agreements illegal—it only makes them not actionable. Second, the court found that the only agreement that the state had proved applied only to advertised prices, not actual selling prices. Even if the statute made minimum RPM agreements illegal, "[a]dvertising agreements cannot be the subject of a vertical RPM claim, because they do not restrain resale prices, but merely restrict advertising."[13] Third, the court found that the state had not proved any actual RPM agreements were reached between Tempur-Pedic and its retailers. Instead, the state had shown "merely that Tempur-Pedic enacted its minimum price policy and that

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[5] 95 A.D.3d 539 (N.Y. App. Div. 2012).

[6] The appellate opinion's otherwise admirable brevity means that we must look elsewhere for the facts. I discussed this case in an earlier article, *A Tale of Two Coasts*, *supra* note 4. These facts are drawn from that article (*id.* at 3), which in turn drew from the Verified Petition, *People v. Tempur-Pedic Int'l, Inc.*, No. 400837/10 (N.Y. Sup. Ct. N.Y. County filed Mar. 29, 2010), and from the Decision, Order, and Final Judgment [hereinafter *Tempur-Pedic* Order], filed on January 14, 2011.

[7] For purchases from Tempur-Pedic, see http://www.tempurpedic.com/shopping-with-us/buy-from-us.asp. For purchases from Internet resellers, see, for example, http://www.backtobed.com/mattresses/tempur-pedic/.

[8] *Tempur-Pedic* Order, *supra* note 6, at 2–3.

[9] United States v. Colgate & Co., 250 U.S. 300 (1919).

[10] *Tempur-Pedic* Order, *supra* note 6, at 3.

[11] *Id.*

[12] N.Y. Gen. Bus. Law § 369-a.

[13] *Tempur-Pedic*, 95 A.D.3d at 540.

its retailers independently determined to acquiesce to the pricing scheme in order to continue carrying Tempur-Pedic's products"[14]—in other words, a *Colgate* policy.

Kansas

O'Brien v. Leegin[15] involved the same basic facts as the U.S. Supreme Court's *Leegin* decision, but the claim (by a putative class of consumers) was asserted under Kansas state law. The trial court had awarded summary judgment for the defense, but the Kansas Supreme Court reversed. Under Kansas state law, vertical resale price maintenance agreements remain illegal per se.

Not Your Basic Sherman Act. The main Kansas statute—which is not patterned after the Sherman Act—reaches vertical pricing agreements in several ways. It is illegal for two or more persons to form agreements:

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- "to 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 in this state."[16]
- to "increase or reduce the price of merchandise, produce or commodities";[17]
- to "[b]ind . . . themselves not to sell [or] . . .dispose of . . . any article or commodity . . . below a common standard figure."[18]
- "to keep the price of such article, commodity or transportation at a fixed or graded figure."[19]
- "in any manner establish or settle the price of any article or commodity . . . between them . . . to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity."[20]
- "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."[21]

A related Kansas statute also prohibits "[a]ll arrangements, contracts, agreements, trusts, or combinations between persons made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state . . . and all arrangements, contracts, agreements, trusts or combinations between persons, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles."[22]

Rejecting Rule of Reason. The Kansas Supreme Court expressly rejected a rule of reason approach to vertical RPM agreements. The state statute does not mention reasonableness or the rule of reason; it applies instead to "any such combinations" and "all arrangements."[23] Faced with what it considered plain language, the court considered first the federal precedent and then its

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[14] *Id.*

[15] O'Brien v. Leegin Creative Leather Prods., Inc., 277 P.3d 1062 (Kan. 2012).

[16] KAN. STAT. ANN. § 50-101 cl. Fourth.

[17] *Id.* cl. Second.

[18] *Id.* cl. Fifth subsec. a.

[19] *Id.* cl. Fifth subsec. b.

[20] *Id.* cl. Fifth subsec. c.

[21] *Id.* cl. Fifth subsec. d.

[22] *Id.* § 50-112.

[23] *O'Brien*, 277 P.3d at 1074.

own state precedents. As to the federal precedents, the court was very plain: "federal precedents interpreting . . . federal statutes have little or no precedential weight when the task is interpretation and application of a clear and dissimilar Kansas statute."[24] In its own precedents, the court found two strands: a series of cases that held vertical RPM agreements unenforceable, and two other cases that took a reasonableness approach—although neither was a vertical RPM case. The court explicitly rejected a reasonableness approach for vertical RPM agreements: "The clear statutory language . . . leaves no room for such an approach [of considering reasonableness]. The simple, per se rule of *Mills*, *United Artists*, and *Joslin* survives. The reasonableness rubric of *Heckard* and *Okerberg* is overruled."[25]

Dual Distribution. The supplier in *O'Brien* (as in the federal *Leegin* case) owned some retail outlets, which raised the question of whether the rule of law should be any different for a supplier that competes with its own retailers (as opposed to a supplier that does not participate in the next level of distribution). The Kansas Supreme Court did not need to consider this distinction, because it applied the same per se rule regardless of whether the agreement was vertical or horizontal. The fact that the agreements might be a mix of vertical and horizontal was therefore irrelevant—or rather, horizontal price-fixing was an alternative theory, but under the same legal rule of per se liability.[26]

Colgate Doctrine Survives in Kansas—or Does It? Early in its opinion the Kansas Supreme Court suggests that for at least one part of the Kansas statute a plaintiff need only show "a combination of capital, skill, or acts, by two or more persons," and not "a relationship rising to the level of an agreement."[27] Later, however, the court explicitly states that both a "combination" and an "arrangement" require "something more than merely a unilateral pricing policy adopted by a wholesale supplier."[28]

The court acknowledged that the manufacturer's receipt of complaints from some resellers about the discounting practices of other resellers would not be enough to show a combination or arrangement.[29] The court identified several kinds of plus factors that were enough to push the facts past merely unilateral conduct (or at least enough to permit a jury inference). The most important was the existence of express written RPM agreements for a part of the period. Another plus factor was the requirement that resellers (again, for a part of the period at issue) "initial an acknowledgment stating that violation of the policy was grounds for dismissal."[30] The court's reliance on express written agreements is not surprising, and the court's reference to written acknowledgments should remind counselors to urge manufacturers to avoid anything that might *look* like a written agreement. A reseller's written acknowledgment of receipt of a policy may or may not increase the probability of reseller compliance with the policy, but it does increase the risk that a court (rightly or wrongly) will find a violation.

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[24] *Id.* at 1079.

[25] *Id.* at 1083.

[26] *Id.* at 1083–84.

[27] *Id.* at 1066. *See also id.* at 1075 ("Mere arrangements between persons are within the scope of the statute; again, a plaintiff does not have to show a relationship rising to the level of an agreement.").

[28] *Id.* at 1087.

[29] *Id.* ("neither communication between a manufacturer and its retailers nor the existence of complaints about discounting would be enough alone for a plaintiff in a price-fixing action to sustain its burden of proof") (citing Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 768 (1984)).

[30] *Id.*

Some of the other facts that the court cites are disturbingly close to the core of a *Colgate* program. For example, the court cited testimony that the manufacturer "'require[d] everybody to charge the same price.'"[31] Of course it did—that's what the policy is supposed to do. The court also cited the manufacturer's maintenance of a "Pending Pricing Issues" file,[32] and again, the manufacturer is likely going to keep these files in any program that does not provide an immediate, automatic, and permanent termination of a noncompliant reseller.

Most disturbing is the court's citation of the manufacturer's "conduct[ing] investigations into at least two Kansas retailers suspected of discounting."[33] Even if a manufacturer has no due-process obligation, one would hope that a manufacturer might actually investigate the facts before terminating a reseller. The fact that one of those investigations "was launched when one retailer . . . reported another" was also a plus factor for the court.[34] Under a conservative reading of *O'Brien*, a manufacturer therefore not only would refrain from inviting or permitting reseller reports, but it would also prohibit itself from receiving or acting upon such reports—relying instead solely on the manufacturer's own direct observations or on reports from third parties that are not resellers (such as services that monitor internet pricing).[35]

Manufacturers continue to face a variegated landscape of differing state-law approaches to vertical RPM agreements.

A Legislative Fix? In Kansas, the state legislature considered—but did not pass—legislation to reverse *O'Brien*.[36] The purpose of Kansas H.B. 2797 as originally introduced in the Kansas House of Representatives was "to correct the interpretation of the Kansas restraint of trade act . . . made in *O'Brien*," whose holding the bill described as "contrary to the intent of the Kansas legislature in enacting the Kansas restraint of trade act."[37] The bill would effectively have adopted a strict rule of harmonization with federal law, because no agreement or arrangement would be illegal under Kansas law if it "is or would be deemed a reasonable restraint of trade or commerce under section 1 of the Sherman Act, 15 U.S.C. § 1, as construed and interpreted by the federal courts."[38] Ultimately, the House passed a version of the bill that provided that no agreement would be considered illegal if it was "a reasonable restraint of trade or commerce," with a reasonable restraint defined as one that "is reasonable in view of all of the facts and circumstances of the particular case and does not contravene public welfare."[39] The legislative session ended without Kansas

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[31] *Id.*

[32] *Id.*; *see also id.* at 1077.

[33] *Id.* at 1087.

[34] *Id.* at 1087–88.

[35] Likewise, a conservative manufacturer—indeed, most manufacturers—would also refrain from another of the *O'Brien* plus factors—reviewing proposed promotions and giving advance approval. (If a manufacturer does respond to reseller requests for advance approval of specific pricing programs, however, the manufacturer certainly should avoid such expressions as "spread like cancer"! *See id.* at 1069, 1087.).

[36] In contrast, after *Leegin* came down, the Maryland legislature considered (and did pass) a statute making minimum RPM agreements illegal per se. MD. CODE ANN., COM. LAW. § 11-204(a)(1) (2009). Maryland courts would otherwise have followed federal law and judged minimum RPM agreements under the rule of reason. MD. CODE ANN., COM. LAW. §11-202(a)(2) (West 2009) (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"). This statute is discussed in Lindsay, *State Laws After* Leegin, *supra* note 4, at 2.

[37] H.B. 2797, 84th Leg., Reg. Sess. (Kan. 2012) at lines 3–8, *available at* http://kslegislature.org/li/b2011_12/measures/documents/hb2797_00_0000.pdf.

[38] *Id.* § 1(a). The bill would also have prohibited class actions to enforce the Kansas restraint of trade law. *Id.* § 1(b).

[39] House Sub. for S.B. 291, 84th Leg., Reg. Sess. (Kan. 2012) § 1(a), *available at* http://kslegislature.org/li/b2011_12/measures/documents/sb291_03_0000.pdf (as passed by Kansas House May 19, 2012).

Senate action on the bill, but with House passage by a vote of 98 to 16, the bill may return in the next legislature.[40]

Conclusion

Manufacturers continue to face a variegated landscape of differing state-law approaches to vertical RPM agreements. Some states will treat such agreements the same as federal law does, but others will apply the harsher rule of per se illegality.

Manufacturers are well-advised to continue to treat the U.S. Supreme Court's *Leegin* decision not as a license to embark on a national program of RPM agreements, but as a risk-reduction for *Colgate* programs that slip into agreements. Manufacturers should also consciously evaluate and weigh the risks and incremental benefit of certain kinds of *Colgate* implementations (for example, the benefit of resellers' written acknowledgment of receipt of an RPM policy statement may not outweigh the risk). Finally, manufacturers should make sure that they choose the right tool for the real problem. If the problem is too much distribution (or the wrong kind of distributors), that problem might be better addressed through dealer terminations (being mindful, of course, of contractual and state-law provisions for dealer protection). If the problem is *advertising* of discounted prices, the manufacturer should consider a minimum advertised price policy, rather than an RPM policy. In short, manufacturers should remember the principle of "caveat venditor"—let the seller beware. ●

[40] For the vote tally, see the legislative history for S.B. 291, at http://kslegislature.org/li/b2011_12/measures/sb291/ ("Final Action—Substitute passed as amended; Yea: 96 Nay: 18"). The bill as passed by the Kansas House included a sunset provision, providing that the bill's rule of reason provision would expire on June 30, 2013. *See* House Sub. for S.B. 291 § 1(d). The lopsided vote may mean that some legislators viewed the bill as a stop-gap measure.

Overview of State RPM*

Michael A. Lindsay

STATE	LEGISLATION	LITIGATION
AL	***AT:*** **ALA. CODE § 8-10-1 (LexisNexis 2012)** (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** (declaring 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"). ***IB:*** **Ala. Code § 6-5-60(a) (LexisNexis 2012)** (providing for the recovery of damages caused by "an unlawful trust, combine, or monopoly, or its effect, direct or indirect").* * Note: **ALA. CODE § 6-5-60(a)** is not, strictly speaking, an *Illinois Brick* repealer statute because the statute was enacted in 1975, two years before the Supreme Court's decision in *Illinois Brick*.	***H: Vandenberg v. Aramark Educ. Servs., Inc.*, 81 So.3d 326, 335 (Ala. 2011)** (noting "long-standing caselaw applying federal antirust principles to state-law antitrust claims." (citing ***Ex parte Rice*, 67 So.2d 825,829 (Ala. 1953)**); ***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 ***Ex parte Rice*, 67 So. 2d 825, 829 (Ala. 1953)**).
AK	***AT:*** **ALASKA STAT. ANN. § 45.50.562 (West 2012)** (declaring unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce"). ***IB:*** **ALASKA STAT. ANN. § 45.50.577 (West 2012)** (authorizing attorney general, as *parens patriae*, to secure monetary relief "for injuries directly or indirectly sustained by persons by reason of any violation of" state antitrust laws).	***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); *see also* ***West v. Whitney-Fidalgo Seafoods, Inc.*, 628 P.2d 10, 14 (Alaska 1981)** (finding that Alaska legislature intended Alaska courts to look to Sherman Act for guidance).
AZ	***AT:*** **ARIZ. REV. STAT. ANN. § 44-1402 (2012)** (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. ANN. § 44-1412 (2012)** (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 and that 44-1412 permits, but does not require, courts to look to federal case law, rejecting *Illinois Brick*), *aff'd*, **75 P.3d 99 (Ariz. 2003)**.

Michael Lindsay is a partner at Dorsey & Whitney LLP, where he chairs the firm's Antitrust Practice Group.

Abbreviation Key: ***AT*** = Antitrust Provisions; ***PF*** = Price-Fixing Provisions/Cases; ***H*** = Federal Harmonization Clauses/Cases; ***IB*** = *Illinois Brick* Repealer Statute

* This chart is an updated version of the one that accompanied the article by Michael A. Lindsay, *State Resale Price Maintenance Laws After* Leegin, ANTITRUST SOURCE, Oct. 2009, http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/Oct09_Lindsay10_23f.authcheckdam.pdf. *The Antitrust Source* would like to continue to publish timely updates to this chart. If you become aware of a case or statute that should be added, please contact *The Source* at antitrust@att.net.

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STATE	LEGISLATION	LITIGATION
AK	***AT:*** **ARK. CODE. ANN. § 4-75-309 (West 2012)** (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"). ***IB:*** **ARK. CODE. ANN. § 4-75-315(B) (West 2012)** (authorizing attorney general, as *parens patriae*, to secure monetary relief "for injury, directly or indirectly sustained" because of violations of state antitrust laws).	***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).
CA	***AT:*** **CAL. BUS. & PROF. CODE § 16726 (West 2012)** (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) (West 2012)** (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)** (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)** (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"). ***IB:*** **CAL. BUS. & PROF. CODE § 16750 (West 2012)** (providing that a cause of action may be brought by any person injured by an antitrust violation, "regardless of whether such injured person dealt directly or indirectly with the defendant").	***H: Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758,233 P.3d 1066, 111 Cal. Rptr. 3d 666 (Cal. 2010)** (noting that in 1975, "federal antitrust cases were treated as 'applicable' and 'authoritative' on Cartwright Act questions"); ***State ex rel. Van de Kamp v. Texaco, Inc.*, 46 Cal.3d 1147, 1164 (1988)**, *overruled in part on other grounds by statute* ("Our Supreme Court has noted that "judicial interpretation of the Sherman Act, while often helpful, is not directly probative of the Cartwright drafters' intent"); ***Marin Cnty. 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"); ***Asahi Kasei Pharma Corp. v. CoTherix, Inc.*, 138 Cal. Rptr. 3d 620, 626 (Cal. Ct. App. 2012)** ("[T]he Cartwright Act is not derived from the Sherman Act, but rather from the laws of other states, and the Cartwright Act and the Sherman Act differ in wording and scope."); ***Freeman v. San Diego Assn. of Realtors*, 77 Cal. App. 4th 171, 183 n.9 (1999)** (federal precedent should be used "with caution"). ***PF: Chavez v. Whirlpool Corp.*, 113 Cal. Rptr. 2d 175, 179–80 (Cal. Ct. App. 2001)** (applying *Colgate* doctrine to hold that supplier's unilateral exclusion of distributor did not violate Cartwright Act); *see also* ***Mailand v. Burckle*, 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 Distrib. Corp.*, 413 P.2d 139, 145 (Cal. 1966)** (finding that vendor's resale price maintenance scheme violated the Cartwright Act and the Sherman Act); ***People v. Dermaquest, Inc.***, Final Judgment Including Permanent Injunction (consent judgment), Case No. RG 10497526 (Cal. Super. Ct. Alameda County Feb. 23, 2010) (enjoining violations of **CAL. BUS. & PROF. CODE §§ 16720(a), 16720(d), and 16720(e)**; requiring manufacturer-defendant to inform resellers that defendant disavows "all parts of . . . distributor or reseller agreement . . . that purportedly obligated you to maintain certain resale prices"); ***People v. Bioelements Inc.***, Final Judgment Including Permanent Injunction (consent judgment), File No. 10011659 (Cal. Super. Ct., Riverside County, filed Jan. 11, 2011) (provisions substantially similar to *Dermaquest* injunction).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
CO	***AT:*** **COLO. REV. STAT. ANN. § 6-4-104 (West 2012)** (declaring illegal "[e]very contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce"). ***PF:*** **COLO. REV. STAT. ANN. § 6-4-119 (West 2012)** (instructing courts that they "shall" use "comparable" federal court decisions as guidance). ***IB:*** **COLO. REV. STAT. ANN. § 6-4-111(2) (West 2012)** (authorizing attorney general to bring a civil action on behalf of any public entity "injured, either directly or indirectly, in its business or property by reason of" an antitrust violation).	***H:*** *See* ***Pomerantz v. Microsoft Corp.*****, 50 P.3d 929, 933 (Colo. App. 2002)** (applying *Illinois Brick* indirect purchaser rule reasoning; recognizing legislative intent to use federal interpretations to construe state law); *see also* ***Confre Cellars, Inc. v. Robinson*****, No. 01 N 1060, 2002 U.S. Dist. LEXIS 26843, at *62 (D. Colo. Mar. 6, 2002)** (federal antitrust cases "provide substantial guidance" to courts interpreting the Colorado statute).
CT	***AT:*** **CONN. GEN. STAT. ANN. § 35-26 (West 2012)** (declaring unlawful "[e]very contract, combination, or conspiracy in restraint of any part of trade or commerce"). ***PF:*** **CONN. GEN. STAT. ANN. § 35-28(A) (West 2012)** (declaring unlawful contracts, combinations or conspiracies that "fix[], control[] or maintain prices, rates, quotations or fees in any part of trade or commerce"). ***H:*** **CONN. GEN. STAT. ANN. § 35-44B (West 2012)** (courts "shall" be guided by federal interpretations).	***H:*** ***Miller's Pond Co., LLC v. City of New London*****, 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 us to interpret it differently"); *see also* ***Vacco v. Microsoft Corp.*****, 793 A.2d 1048 (Conn. 2002)** (referring to **CONN. GEN. STAT. § 35-44b** and following *Illinois Brick* in finding that "the legislative history makes clear that the legislature intended to [give] Connecticut an [antitrust] [l]aw, similar to the existing [f]ederal [antitrust] law in every respect.") (quoting **14 H.R. Proc., Pt. 9, 1971 Sess., p. 4182) (Statement of Rep. Neiditz)** (brackets in original); ***Westport Taxi Serv., Inc. v. Westport Transit Dist.*****, 664 A.2d 719, 728 (Conn. 1995)**. ***PF:*** ***Elida, Inc. v. Harmor Realty Corp.*****, 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).
DE	***AT:*** **DEL. CODE ANN. TIT. 6, § 2103 (West 2012)** (declaring unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce"). ***H:*** **DEL. CODE ANN. TIT. 6, § 2113 (West 2012)** (requiring that statute "shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes").	***H:*** ***Hammermill Paper Co. v. Palese*****, No. 7128, 1983 Del. Ch. LEXIS 400, at *12 (Del. Ch. June 14, 1983)** (declaring it "manifestly evident" that state antitrust laws should be construed in harmony with federal antitrust law).
DC	***AT:*** **D.C. CODE § 28-4502 (LexisNexis 2012)** ("Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce all or any part of which is within the District of Columbia is declared to be illegal."). ***H:*** **D.C. CODE § 28-4515 (LexisNexis 2012)** ("In construing this chapter, a court of competent jurisdiction may use as a guide interpretations given by federal courts to comparable antitrust statutes."). ***IB:*** **D.C. CODE § 28-4509 (LexisNexis 2012)** ("Any indirect purchaser in the chain of manufacture, production, or distribution of goods or services, upon proof of payment of all or any part of any overcharge for such goods or services, shall be deemed to be injured . . . .").	***H:*** ***Peterson v. Visa U.S.A., Inc.*****, No. Civ. A. 03-8080, 2005 D.C. Super. LEXIS 17, at *9 (D.C. Super. April 22, 2005)** (citing **D.C. CODE § 28-4515**) ("The [D.C. Antitrust Act] allows "a court of competent jurisdiction . . . [to] use as a guide interpretations given by federal courts to comparable antitrust statutes.").

Abbreviation Key: ***AT*** = Antitrust Provisions; ***PF*** = Price-Fixing Provisions/Cases; ***H*** = Federal Harmonization Clauses/Cases; ***IB*** = *Illinois Brick* Repealer Statute

Overview of State RPM

STATE	LEGISLATION	LITIGATION
FL	***AT:*** **Fla. Stat. Ann. § 542.18 (West 2012)** (declaring unlawful "[e]very contract, combination, or conspiracy in restraint of trade or commerce"). ***H:*** **Fla. Stat. Ann. § 542.32 (West 2012)** (describing legislative intent that "due consideration and great weight" be given to federal antitrust case law when interpreting state antitrust statute).	***H: MYD Marine Distrib., Inc. v. Int'l Paint Ltd.*, 76 So.3d 42, 46 (Fla. Dist. Ct. App. 2011)** ("The Florida Legislature has indicated that its intent is for courts that are construing the Florida Antitrust Act to give 'due consideration and great weight . . . to the interpretations of the federal courts relating to comparable federal antitrust statutes.'" (quoting **Fla. Stat. § 542.32 (2009)**); ***Duck Tours Seafari, Inc. v. Key West*, 875 So.2d 650, 653 (Fla. 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]'").
GA	***AT:*** **Ga. Code Ann. § 13-8-2(a)(2) (West 2011)** (declaring unenforceable "contracts in general restraint of trade").	***H: Calhoun v. N. Ga. Elec. Membership Corp.*, 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").
HI	***AT:*** **Haw. Rev. Stat. § 480-4(a) (West 2012)** (declaring unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce"). ***PF:*** **Haw. Rev. Stat. § 480-4(b)(1) (West 2012)** (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 its 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"). ***H:*** **Haw. Rev. Stat. § 480-3 (West 2012)** (requiring Hawaii antitrust statute to be "construed in accordance with judicial interpretations of similar federal antitrust statutes"). ***IB:*** **Haw. Rev. Stat. § 480-13(a)(1) (West 2012)** (providing that "indirect purchasers injured by an illegal overcharge shall recover only compensatory damages, and reasonable attorney's fees").	***H: Courbat v. Dahana Ranch, Inc.*, 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." (quoting ***Ai v. Frank Huff Agency*, 607 P.2d 1304, 1309 n. 11 (Haw. 1980)**)); *see also* ***Island Tobacco Co. v. R.J. Reynolds Tobacco Co.*, 627 P.2d 260, 262, 268 (Haw. 1981)** (federal rulings will not be "blindly accepted;" rather they will "serve primarily as guides to the interpretation and application of state law in the light of the economic and business conditions of this State"), *rev'd on other grounds*, ***Robert's Haw. School Bus, Inc. v. Laupahoehoe Transp. Co., Inc.*, 982 P.2d 853 (Haw. 1999)**.
ID	***AT:*** **Idaho Code Ann. § 48-104 (West 2012)** (declaring unlawful "[a] contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce"). ***H:*** **Idaho Code Ann § 48-102(3) (West 2012)** (providing the statute "shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes"). ***IB:*** **Idaho Code Ann. § 48-108(2) (West 2012)** (authorizing the attorney general, as parens patriae, to bring a cause of action "for injury directly or indirectly sustained" because of any violation of state antitrust laws).	***H: Afton Energy v. Idaho Power Co.*, 834 P.2d 850, 857 (Idaho 1992)** (recognizing that federal antitrust law is traditionally "persuasive" guidance, although not binding (quoting ***Pope v. Intermountain Gas Co.*, 646 P.2d 988, 994 (Idaho 1982)**)). ***PF: K. Hefner v. Caremark, Inc.*, 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).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
IL	***AT:*** **740 Ill. Comp. Stat. Ann. 10/3(2) (West 2012)** (declaring unlawful any "contract, combination, or conspiracy with one or more other persons [to] unreasonably restrain trade or commerce"). ***PF:*** **740 Ill. Comp. Stat. Ann. 10/3(1)(A) (West 2012)** (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"). ***IB:*** **740 Ill. Comp. Stat. Ann. 10/7 (West 2012)** (providing that "No provision of [the Illinois Antitrust] Act shall deny any person who is an indirect purchaser the right to sue for damages").	***H: People v. Crawford Distrib. Co.*, 291 N.E.2d 648, 652–53 (Ill. 1972)** (declaring that federal antitrust precedent is a "useful guide to our court"). ***PF: People v. Keystone Auto. Plating Corp.*, 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); ***Gilbert's Ethan Allen Gallery v. Ethan Allen, Inc.*, 620 N.E.2d 1349, 1350, 1354 (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), *aff'd*, **642 N.E.2d 470 (Ill. 1994)**; *but see* ***State v. Herman Miller, Inc.*, No. 08-2977 (S.D.N.Y. filed Mar. 21, 2008)** (Stipulated Final Judgment and Consent Decree) (post-*Leegin* challenge to minimum RPM agreement under federal, New York, Michigan, and Illinois law).
IN	***AT:*** **Ind. Code Ann. § 24-1-2-1 (West 2012)** (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"). ***PF:*** **Ind. Code Ann. § 24-1-2-1 (West 2012)** (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").	***H: Deich-Keibler v. Bank One*, No. 06-3802, 2007 U.S. App. LEXIS 15419, at *10 (7th Cir. June 26, 2007)** (noting practice of construing **Ind. Code § 24-1-2-1** in light of federal antitrust case law); ***Rumple v. Bloomington Hosp.*, 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). ***PF: Ft. Wayne Cleaners & Dyers Ass'n. v. Price*, 137 N.E.2d 738 (Ind. Ct. App. 1956)** (affirming judgment against defendant dry cleaner association for vertical minimum price fixing).
IA	***AT:*** **Iowa Code Ann. § 553.4 (West 2012)** (providing that "[a] contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market"). ***H:*** **Iowa Code Ann. § 553.2 (West 2012)** (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).	***H: Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181–82 (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"). *But cf.* ***Comes v. Microsoft Corp.*, 646 N.W.2d 440, 446 (Iowa 2002)** (finding that "Congress intended federal antitrust laws to supplement, not displace, state antitrust remedies" and that **Iowa Code § 553.2** does not require "Iowa courts to interpret the Iowa Competition Law the same way federal courts have interpreted federal law," thus rejecting *Illinois Brick*).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
KS	***AT/PF:*** **KAN. STAT. ANN. § 50-101 (West 2011)** (declaring unlawful and defining trusts as any "combination of capital, skill, or acts, by two or more persons" carried out for the purpose of, *inter alia*: restricting trade or commerce; increasing or reducing the price of goods; or preventing competition). ***PF:*** **KAN. STAT. ANN. § 50-112 (West 2011)** (declaring unlawful "all arrangements, contracts, agreements, trusts or combinations between persons, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles"). ***IB:*** **KAN. STAT. ANN. § 50-161(B) (West 2011)** (providing that a cause of action "may be brought by any person who is injured in such person's business or property by reason of" an antitrust violation, "regardless of whether such injured person dealt directly or indirectly with the defendant").	***H: Bergstrom v. Noah*, 974 P.2d 520, 531 (Kan. 1999)** (finding federal antitrust case law "persuasive" but "not binding" on the interpretation of the Kansas antitrust statute). ***PF: O'Brien v. Leegin Creative Leather Prods., Inc.*, 101,000, 2012 WL 1563976, at *23 (Kan. May 4, 2012)** (holding that both vertical and horizontal price maintenance agreements are per se illegal under Kansas law) (overruling **Okerberg v. Crable, 341 P.2d 966 (Kan. 1959)**); ***Joslin v. Steffen Ice & Ice Cream Co.*, 54 P.2d 941, 943 (Kan. 1936)** (holding that resale price maintenance scheme by ice cream wholesaler violated **KAN. STAT. ANN. § 50-112**).
KY	***AT:*** **KY. REV. STAT. ANN. § 367.175 (West 2011)** (declaring unlawful "[e]very contract, combination in the form of trust and otherwise, or conspiracy, in restraint of trade or commerce").	***H: Mendell v. Golden-Farley of Hopkinsville, Inc.*, 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).
LA	***AT:*** **LA. REV. STAT. ANN. § 51:122 (2011)** (declaring illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce").	***H: Free v. Abbott Lab.*, 982 F. Supp. 1211, 1214 (M.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 ***La. Power & Light v. United Gas Pipe Line*, 493 So. 2d 1149, 1158 (La. 1986)**)); *see also* ***Red Diamond Supply, Inc. v. Liquid Carbonic Corp.*, 637 F.2d 1001, 1003, 1005 n.6 (5th Cir. 1981)**. (The state antitrust statutes . . . were fashioned after the federal antitrust statutes"); ***PF: Van Hoose v. Gravois*, 70 So.3d 1017, 1023 (La. Ct. App. 2011)** ("Where the alleged restrictions are vertical, and not directed at fixing prices, their legality is governed by the rule of reason, and in order to prevail under the rule of reason, a plaintiff must show that the defendants' conduct has an adverse effect on competition."); ***Red Diamond Supply Inc. v. Liquid Carbonic Corp.*, 637 F.2d 1001, 1005 n.6 (5th Cir. 1981)** ("Vertical price restrictions are per se illegal." (dictum) (citing ***Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 51 n.18 (1977)**).
ME	***AT:*** **ME. REV. STAT. ANN. TIT. 10, § 1101 (2011)** (declaring illegal "[e]very contract, combination in the form of trusts or otherwise, or conspiracy, in restraint of trade or commerce"). ***IB:*** **ME. REV. STAT. ANN. TIT. 10, § 1104(1) (2011)** (providing a right of action for any person "injured directly or indirectly in its business or property by any other person or corporation by reason of" an antitrust violation).	***H: Davric Maine Corp. v. Rancourt*, 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" (quoting ***Tri-State Rubbish, Inc. v. Waste Mgmt., Inc.*, 998 F.2d 1073, 1081 (1st Cir. 1993)**)).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
MD	***AT:*** **MD. CODE ANN., COM. LAW § 11-204(a)(1) (West 2012)** (prohibiting any "contract, combination, or conspiracy" that unreasonably restrains trade). ***PF:*** **MD. CODE ANN., COM. LAW § 11-204(b) (West 2012)** (defining any "contract, combination, or conspiracy that establishes a minimum price below which a retailer, wholesaler, or distributor may not sell a commodity or service" to be an unreasonable restraint of trade or commerce). ***H:*** **MD. CODE ANN., COM. LAW §11-202(a)(2) (West 2012)** (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"). ***IB:*** **MD. CODE ANN., COM. LAW § 11-209(b)(ii) (West 2012)** (providing that the State or any political subdivision thereof may maintain an action for damages stemming from an antitrust violation "regardless of whether it dealt directly or indirectly" with the defendant).	***H: Davidson v. Microsoft Corp.*, 792 A.2d 336, 340–41 (Md. Ct. Spec. App. 2002)** (citing **MD. CODE ANN., COM. LAW § 11-202(A)(2)** when applying *Illinois Brick* indirect purchaser rule to state statute); *see also* ***Purity Prod., Inc. v. Tropicana Prod., Inc.*, 702 F. Supp. 564, 574 (D. Md. 1988)** (finding that the Court's application of the Maryland Antitrust Act "should be guided by the Court's similar interpretation of the federal antitrust statutes).
MA	***AT:*** **MASS. GEN. LAWS ANN. CH. 93, § 4 (2012)** (declaring unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce"). ***H:*** **MASS. GEN. LAWS ANN. CH. 93, § 1 (2012)** (requiring the Massachusetts antitrust laws to be "construed in harmony with judicial interpretations of comparable federal statutes insofar as practicable").	***H: Ciardi v. F. Hoffmann La Roche, Ltd.*, 762 N.E.2d 303, 307–08 (Mass. 2002)** (reconciling state antitrust law with *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 729–736 (1977) because **MASS. GEN. LAWS CH. 93, § 1** requires state courts to harmonize state antitrust law with comparable federal law); *see also* ***C. R. Bard, Inc. v. Med. Elec. Corp.*, 529 F. Supp. 1382, 1391 (D. Mass. 1982)** (noting that sections 4 and 5 of the Massachusetts Antitrust Act are "directly comparable" to sections 1 and 2 of the Sherman Act).
MI	***AT:*** **MICH. COMP. LAWS ANN. § 445.772 (West 2012)** (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 ANN. § 445.784(2) (West 2012)** (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"). ***IB:*** **MICH. COMP. LAWS ANN. § 445.778 (West 2012)** (providing that the state, any political subdivision, or any other person "threatened with injury or injured directly or indirectly" by an antitrust violation may bring an action for damages and injunctive relief).	***H: Little Caesar Enters. v. Smith*, 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"). ***PF: State v. Herman Miller, Inc.*, No. 08-2977 (S.D.N.Y. filed Mar. 21, 2008)** (Stipulated Final Judgment and Consent Decree) (post-*Leegin* challenge to minimum RPM agreement under federal, New York, Michigan, and Illinois law).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
MN	***AT:*** **Minn. Stat. Ann. § 325D.51 (West 2012)** (declaring unlawful every "contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce"). ***PF:*** **Minn. Stat. Ann. § 325D.53, Subdiv. 1(1)(a) (West 2012)** (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"). ***IB:*** **Minn. Stat. Ann. § 325D.57 (West 2012)** (providing a cause of action and treble damage remedy for any person or governmental body that is "injured directly or indirectly" by an antitrust violation).	***H: Lorix v. Crompton Corp.*, 736 N.W.2d 619, 627–29 (Minn. 2007)** (Minnesota generally follows federal law but rejects ***Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983)**); *see also* ***State v. Rd. Constructors, Inc.*, Nos. C1-95-2263, C9-95-2110, 1996 WL 266415, at *2 (Minn. Ct. App. May 21, 1996)** (recognizing that '"Minnesota antitrust law is to be interpreted consistently with the federal courts' construction of federal antitrust law'" (quoting ***State v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 894 (Minn. Ct. App. 1992)** *aff'd*, **500 N.W.2d 788 (Minn. 1993)**)). ***PF: State v. Alpine Air Prods., Inc.*, 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 ***Keating v. Philip Morris, Inc.*, 417 N.W.2d 132, 136 (Minn. App. 1987)** and ***State v. Duluth Board of Trade*, 121 N.W. 395, 399 (Minn. 1909)**), *aff'd*, **500 N.W.2d 788 (Minn. 1993)**.
MS	***AT:*** **Miss. Code Ann. § 75-21-1(a) (West 2011)** (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"). ***PF:*** **Miss. Code Ann. § 75-21-1(c) (West 2011)** (defining a trust as a combination, contract, understanding or agreement that would, among other things, "limit, increase or reduce the price of a commodity"). ***IB:*** **Miss. Code Ann. § 75-21-9 (West 2011)** (providing a right of action for any person injured by a trust or combine, "or by its effects direct or indirect").	***H: Futurevision Cable Sys., Inc. v. Multivision Cable TV Corp.*, 789 F. Supp. 760, 780 (D. Miss. 1992)** (dismissing state law violations because the federal law violations failed) (citing ***Walker v. U-Haul of Miss.*, 734 F.2d 1068, 1070 n.5 (5th Cir. 1984)** (treating Mississippi and federal antitrust claims as "analytically identical")), *aff'd*, **986 F.2d 1418 (5th Cir. 1993)**.
MO	***AT:*** **Mo. Ann. Stat. § 416.031 (West 2011)** (declaring 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 therefor, 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"). ***H:*** **Mo. Ann. Stat. § 416.141 (West 2011)** (requiring that state antitrust statute "shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes").	***H: Hamilton v. Spencer*, 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); *see also* ***Stensto v. Sunset Memorial Park, Inc.*, 759 S.W.2d 261, 266 (Mo. App. 1988)** (state antitrust laws should be harmonized with federal antitrust laws).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
MT	***PF:*** **MONT. CODE ANN. § 30-14-205 (2011)** (declaring 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").	***H: Smith v. Video Lottery Consultants*, 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).
NE	***AT:*** **NEB. REV. STAT. § 59-801 (LexisNexis 2011)** (declaring illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce"). ***H:*** **NEB. REV. STAT. § 59-829 (LexisNexis 2011)** (mandating that courts "shall follow the construction given to the federal law by the federal courts" when any provision is the same as or similar to the language of a federal antitrust law). ***IB:*** **NEB. REV. STAT. § 59-821 (LexisNexis 2011)** (providing a right of action for any person injured due to an antitrust violation, "whether such injured person dealt directly or indirectly with the defendant").	***H: Heath Consultants, Inc. v. Precision Instruments, Inc.*, 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 constitute persuasive authority"); *see also* ***Arthur v. Microsoft Corp.*, 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). ***PF: State ex rel. Douglas v. Associated Grocers of Neb. Coop., Inc.*, 332 N.W.2d 690, 693 (Neb. 1983)** (citing federal precedent as authority that "[b]oth 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).
NV	***AT:*** **NEV. REV. STAT. ANN. § 598A.060 (West 2011)** (declaring unlawful several categories of activities that constitute a "contract, combination or conspiracy in restraint of trade"). ***PF:*** **NEV. REV. STAT. ANN. § 598A.060 (West 2011)** (enumerating unlawful activities including "price fixing, which consists of raising, depressing, fixing, pegging or stabilizing the price of any commodity or service"). ***H:*** **NEV. REV. STAT. ANN. § 598A.050 (West 2011)** (declaring provisions "shall be construed in harmony with prevailing judicial interpretations of the federal antitrust statutes"). ***IB:*** **NEV. REV. STAT. ANN. § 598A.210 (West 2011)** (providing a right of action and treble damage remedy for "any person injured or damaged directly or indirectly" by an antitrust violation).	***H: Boulware v. Nev. Dep't of Human Res.*, 960 F.2d 793, 800–01 (9th Cir. 1992)** (finding Nevada statute adopts by reference applicable federal antitrust case law).
NH	***AT:*** **N.H. REV. STAT. ANN. § 356:2 (LexisNexis 2012)** (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"). ***H:*** **N.H. REV. STAT. ANN. § 356:14 (LexisNexis 2012)** (permitting courts to be "guided by interpretations of the United States' antitrust laws").	***H: Minuteman, LLC v. Microsoft Corp.*, 795 A.2d 833, 836 (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"). ***PF: Wheeler v. Mobil Chem. Co.*, Civ. No. 94-228-B, 1994 U.S. Dist. LEXIS 16697, at *2–3 (D.N.H. Nov. 17, 1994)** (relying on federal case law to apply rule of reason to nonprice vertical restraints under **N.H. REV. STAT. ANN. § 356:14**).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
NJ	***AT:*** **N.J. Stat. Ann. § 56:9-3 (West 2012)** (declaring unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce"). ***PF:*** **N.J. Stat. Ann. § 56:4-1.1 (West 2012)** ("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"). ***H:*** **N.J. Stat. Ann. § 56:9-18 (West 2012)** (requiring that act "shall be construed in harmony" with interpretations of comparable federal antitrust statutes to effectuate uniformity among the states "insofar as practicable").	***H: State v. Lawn King, Inc.*, 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); *see also* ***Glasofer Motors v. Osterlund, Inc.*, 433 A.2d 780, 787 (N.J. Super. Ct. App. Div. 1981)** (New Jersey's statute "to be construed in harmony with ruling judicial interpretations of federal antitrust statutes."). ***PF: Exit A Plus Realty v. Zuniga*, 930 A.2d 491, 497 (N.J. Super. Ct. App. Div. 2007)** (post-*Leegin* reference to **N.J. Stat. Ann. § 56:4-1.1** (declaring vertical price fixing agreements per se unenforceable), but without any discussion of *Leegin*).
NM	***AT:*** **N.M. Stat. Ann. § 57-1-1 (West 2012)** (declaring unlawful "[e]very contract, agreement, combination or conspiracy in restraint of trade or commerce"). ***H:*** **N.M. Stat. Ann. § 57-1-15 (West 2012)** (requiring that act "shall be construed in harmony with judicial interpretations of the federal antitrust laws" in order to achieve uniform application of the state and federal antitrust laws). ***IB:*** **N.M. Stat. Ann. § 57-1-3 (West 2012)** (providing a right of action and treble damage remedy for "any person threatened with injury or injured in his business or property, directly or indirectly," by an antitrust violation).	***H: Romero v. Philip Morris Inc.*, 242 P.3d 280, 291 (N.M. 2010)** (stating that courts have a "duty . . . to ensure that New Mexico antitrust law does not deviate substantially from federal interpretations of antitrust law."); ***Smith Mach. Corp. v. Hesston, Inc.*, 694 P.2d 501, 505 (N.M. 1985)** (recognizing that New Mexico courts look to federal antitrust cases "[i]n the absence of New Mexico decisions directly on point").
NY	***AT:*** **N.Y. Gen. Bus. Law § 340 (McKinney 2012)** (declaring unlawful "[e]very contract, agreement, arrangement or combination . . . whereby [c]ompetition 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"). ***PF:*** **N.Y. Gen. Bus. Law § 369-a (McKinney 2012)** ("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"). ***IB:*** **N.Y. Gen. Bus. Law § 340 (McKinney 2012)** (providing that a person who sustains damages as a result of an antitrust violation shall not have their recovery limited due to the fact that that person "has not dealt directly with the defendant").	***H: Sperry v. Crompton Corp.*, 863 N.E.2d 1012, 1018 (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 Donnelly Act differently "where State policy, differences in the statutory language or the legislative history justify such a result." (quoting ***Anheuser-Busch, Inc. v. Abrams*, 520 N.E.2d 535, 539 (N.Y. 1988)**); *see also* ***Aimcee Wholesale Corp. v. Tomar Prod., Inc.*, 237 N.E.2d 223, 225 (N.Y. 1968)** (recognizing that New York antitrust law was modeled on Sherman Act). ***PF: Anheuser-Busch, Inc. v. Abrams*, 520 N.E.2d 535, 536–37 (N.Y. 1988)** (recognizing that vertical restraints are not per se illegal under New York law but may be illegal if they unreasonably restrain trade); ***People v. Tempur-Pedic Int'l, Inc.*, 95 A.D.3d 539, 539 (N.Y. App. Div. 2012)** (holding that under **N.Y. Gen. Bus. Law § 369-a (2009)** RPM agreements are unenforceable but not illegal; agreements on minimum advertised prices "cannot be the subject of a vertical RPM claim, because they do not restrain resale prices, but merely restrict advertising."); ***Dawn to Dusk, Ltd. v. Frank Brunckhorst Co.*, 23 A.D.2d 780, 781 (N.Y. App. Div. 1965)** (applying rule of reason to vertical price restraints); ***State v. Herman Miller, Inc.*, No. 08-2977 (S.D.N.Y. filed Mar. 21, 2008)** (Stipulated Final Judgment and Consent Decree) (post-*Leegin* challenge to minimum RPM agreement under federal, New York, Michigan, and Illinois law).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
NC	***AT:*** **N.C. GEN. STAT. ANN. § 75-1 (West 2011)** (declaring illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce").	***H: Madison Cablevision, Inc. v. Morganton*, 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 ***Rose v. Vulcan Materials Co.*, 194 S.E.2d 521, 530 (N.C. 1973)**); *see also* ***N.C. Steel, Inc. v. Nat'l Council on Comp. Ins.*, 472 S.E.2d 578, 582–83 (N.C. Ct. App. 1996)** (noting extensive North Carolina history of reliance on interpretations of federal antitrust law), *aff'd in part and rev'd in part*, **496 S.E.2d 369 (N.C. 1998)**. ***PF: State v. McLeod Oil Co.*, No 05 CVS 13975 (N.C. Super CL, Wake Co., July 30, 2007)** (consent decree in case where state challenged minimum resale price agreements between gasoline distributor and resellers).
ND	***AT:*** **N.D. CENT. CODE ANN. § 51-08.1-02 (West 2011)** (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"). ***IB:*** **N.D. CENT. CODE ANN. § 51-08.1-08 (West 2011)** (providing that recovery for damages caused by an antitrust violation shall not be barred because of the fact that the person threatened with injury or injured "has not dealt directly with the defendant").	No cases on point—statute only.
OH	***AT:*** **OHIO REV. CODE ANN. § 1331.01(B)(1) (West 2011)** (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) (West 2011)** (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: Johnson v. Microsoft Corp.*, 834 N.E.2d 791, 794–95 (Ohio 2005)** (recognizing that "Ohio has long followed federal law in interpreting the Valentine Act" because the state statute is "'patterned after the Sherman Antitrust Act'" (quoting ***C.K. & J.K., Inc. v. Fairview Shopping Ctr. Corp.*, 407 N.E.2d 507, 509 (Ohio 1980)**)); ***Google, Inc. v. MyTriggers.com, Inc.*, No. 09CVH10-14836, 2011 WL 3850286 (Ohio Com. Pl. Aug. 31, 2011)** ("[T]he Ohio Supreme Court has . . . 'interpreted the statutory language in light of federal judicial construction' of federal antitrust statutes. . . . [F]ederal policy and federal cases interpreting the Sherman Act must be examined to ascertain the meaning of the Valentine Act." (quoting ***Johnson v. Microsoft Corp.*, 834 N.E.2d 791, 797 (Ohio 2005)** and ***Schweizer v. Riverside Methodist Hosps.*, 671 N.E.2d 312, 314 (Ohio Ct. App. 1996)**)). ***PF: McCall Co. v. O'Neil*, 1914 WL 1669, at *4 (Ohio Com. Pl. Nov. 12, 1914)** (interpreting statute to prohibit scheme to fix prices at which goods may be resold by the reseller); *see also* ***Ohio ex. rel. Brown v. Andrew Palzes, Inc.*, 317 N.E.2d 262, 266 (Ohio Com. Pl. 1973)** (interprets **OHIO REV. CODE ANN. § 1331.01(B)** as a per se bar to maximum resale price agreements).
OK	***AT:*** **OKLA. STAT. ANN. TIT. 79 § 203 (West 2011)** (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. ANN. TIT. 79 § 212 (West 2011)** (requiring that act "shall be interpreted in a manner consistent with Federal Antitrust Law" and applicable case law).	***H: Star Fuel Marts, LLC v. Sam's E., Inc.*, 362 F.3d 639, 648 n.3 (10th Cir. 2004)** (Oklahoma's antitrust act is required by statute to be interpreted in accordance with federal antitrust case law).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
OR	***AT:* Or. Rev. Stat. Ann. § 646.725 (West 2012)** (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) (West 2012)** (declaring legislative intent that federal court decisions interpreting federal antitrust law "shall be persuasive authority"). ***IB:* Or. Rev. Stat. § 646.780(1)(a) (West 2012)** (providing a right of action and treble damage remedy for antitrust violations, "regardless of whether the plaintiff dealt directly or indirectly with the adverse party").	***H: Jones v. City of McMinnville*, No. 05-35523, 2007 U.S. App. LEXIS 11235, at *8 (9th Cir. 2007)** (finding that Oregon and federal antitrust statutes are "almost identical" and that Oregon courts look to federal decisions as "persuasive") (quoting **Or. Rev. Stat. § 646.715**; ***Or. Laborers-Emp'rs Health & Welfare Trust Fund v. Philip Morris, Inc.*, 185 F.3d 957, 963 n.4 (9th Cir. 1999)**), *cert. denied*, **528 U.S. 1075 (2000)**; *see also* ***Willamette Dental Group, P.C. v. Or. Dental Serv. Corp.*, 882 P.2d 637, 640 (Or. Ct. App. 1994)** (with no reported Oregon decisions on point, "we look to federal decisions interpreting Section 2 of the Sherman Act for persuasive, albeit not binding, guidance").
PA	No statute—common law remedies only.	***PF: Shuman v. Bernie's Drug Concessions, Inc.*, 187 A.2d 660, 662 (Pa. 1963)** (finding horizontal price-fixing agreements to be unlawful at common law and holding that vertical restraints that are the "incidents or fruits of an unlawful [horizontal] conspiracy . . . are infected with the illegality of the horizontal conspiracy and are hence unenforceable"). ***H: Collins v. Main Lind Bd. of Realtors*, 304 A.2d 493, 496 (Pa. 1973)** (court looks to United States Supreme Court case for guidance in determining whether an agreement unreasonably restrains trade).
RI	***AT:* R.I. Gen. Laws Ann. § 6-36-4 (West 2012)** (declaring unlawful "[e]very contract, combination, or conspiracy in restraint of, or to monopolize, trade or commerce"). ***H:* R.I. Gen. Laws Ann. § 6-36-2(b) (West 2012)** (requiring that act "shall be construed in harmony with judicial interpretations of comparable federal antitrust statutes insofar as practicable, except where provisions of this chapter are expressly contrary to applicable federal provisions as construed"). ***IB:* R.I. Gen. Laws Ann. § 6-36-12(g) (West 2012)** (providing that, in an antitrust action, the fact that a person "has not dealt directly with the defendant shall not bar or otherwise limit recovery").	***H: UXB Sand & Gravel, Inc. v. Rosenfeld Concrete Corp.*, 599 A.2d 1033, 1035 (R.I. 1991)** (statute requires court to interpret state antitrust statute in harmony with federal antitrust statutes). ***PF: Auburn News Co. v. Providence Journal Co.*, 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), *rev'd on other grounds*, **659 F.2d 273 (1st Cir. 1981)**, *cert. denied*, **455 U.S. 921 (1982)**.
SC	***AT:* S.C. Code Ann. § 39-3-10 (2011)** (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 (2011)** (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: Drs. Steuer & Latham, P.A. v. Nat'l Med. Enters.*, 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), *aff'd*, **846 F.2d 70 (4th Cir. 1988)** (quoting ***In re Wiring Device Antitrust Litig.*, 498 F. Supp. 79, 87 (E.D.N.Y. 1980)**). ***PF: Walter Wood Mowing & Reaping Co. v. Greenwood Hardware Co.*, 55 S.E. 973, 975–76 (1906)** (analyzing vertical restraint under rule of reason analysis).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
SD	***AT:*** **S.D. Codified Laws § 37-1-3.1 (2011)** (making unlawful any "contract, combination, or conspiracy between two or more persons in restraint of trade or commerce"). ***H:*** **S.D. Codified Laws § 37-1-22 (2011)** (allowing courts to "use as a guide interpretations given by the federal or state courts to comparable antitrust statutes"). ***IB:*** **S.D. Codified Laws § 37-1-33 (2011)** (providing that "[n]o provision of this chapter may deny any person who is injured directly or indirectly in his business or property" by an antitrust violation).	***H: Byre v. City of Chamberlain*, 362 N.W.2d 69, 74 (S.D. 1985)** (because of the similarity of language between federal and state antitrust statutes and because of the legislative suggestion for interpretation found in **S.D. Codified Laws § 37-1-22**, "great weight should be given to the federal cases interpreting the federal statute"); *see also* ***In re S.D. Microsoft Antitrust Litig.*, 707 N.W.2d 85, 99 (S.D. 2005)** (reaffirming that "great weight should be given to the federal cases interpreting the federal statute" and citing *Byre* for the proposition that, when state courts lack precedent on an issue, they look to federal case law for guidance). ***PF: Assam Drug Co. v. Miller Brewing Co.*, 624 F. Supp. 411, 412–13 (D.S.D. 1985)** (applying rule of reason to vertical territorial restraint and suggesting rule of reason is appropriate for all vertical restraints), *aff'd*, **798 F.2d 311 (8th Cir. 1986)**.
TN	***AT:*** **Tenn. Code Ann. § 47-25-101 (West 2012)** (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"). ***PF:*** **Tenn. Code Ann. § 47-25-101 (West 2012)** (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").	***H: Spahr v. Leegin Creative Leather Prods.*, No. 2:07-CV-187, 2008 WL 3914461 (E.D. Tenn. Aug. 20, 2008)**, *appeal dismissed*, **File No. No. 08-6165 (6th Cir. Nov. 20, 2008)** (recognizing argument that every Tennessee case decided under the Tennessee Trade Practice Act has relied heavily on federal precedent, but noting at least one circumstance where Tennessee Supreme Court has extended the reach of the TTPA beyond that permitted by the Supreme Court's interpretation of the Sherman Act); ***Freeman Indus. LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 519 (Tenn. 2005)** (declining to follow *Illinois Brick* 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). ***PF: Spahr v. Leegin Creative Leather Prods.*, No. 2:07-CV-187, 2008 WL 3914461 (E.D. Tenn. Aug. 20, 2008)**, *appeal dismissed*, **File No. No. 08-6165 (6th Cir. Nov. 20, 2008)** (applying rule of reason to antitrust challenge of minimum RPM agreement under Tennessee state law).
TX	***AT:*** **Tex. Bus. & Com. Code Ann. § 15.05(A) (West 2011)** (making unlawful "[e]very contract, combination, or conspiracy in restraint of trade or commerce"). ***H:*** **Tex. Bus. & Com. Code Ann. § 15.04 (West 2011)** (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").	***H: Star Tobacco, Inc. v. Darilek*, 298 F. Supp. 2d 436, 440 (E.D. Tex. 2003)** (finding that the Texas antitrust statute is intended to be construed in accordance with federal antitrust statutes (citing ***Abbot Labs., Inc. v. Segura*, 907 S.W.2d 503, 511 (Tex. 1995) (Gonzalez, J., concurring)**); *see also* ***Gonzalez v. San Jacinto Methodist Hosp.*, 880 S.W.2d 436, 441 (Tex. App. 1994)** (Texas Antitrust Act "should be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes"); ***Puentes v. Spohn Health Network*, No. 13 08 00100, 2009 Tex. App. LEXIS 4131, at *15 (Tex. App. June 11, 2009)** (cites *Leegin* for principle that a per se rule is appropriate only after courts have had considerable experience with the type of restraint at issue, and only if courts can predict with confidence that it would be invalidated in all or almost all instances under the rule of reason).

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
UT	***AT:*** **UTAH CODE ANN. § 76-10-914(1) (West 2011)** (declaring illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce"). ***H:*** **UTAH CODE ANN. § 76-10-926 (West 2011)** (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").	***H: Evans v. State*, 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).
VT	***AT:*** **VT. STAT. ANN. TIT. 9, § 2453(a) (West 2012)** (declaring unlawful "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce"). ***H:*** **VT. STAT. ANN. TIT. 9, § 2453(b) (West 2012)** (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"). ***IB:*** **VT. STAT. ANN. TIT. 9, § 2465(b) (West 2012)** (providing that the fact that a person "has not dealt directly with a defendant shall not bar or otherwise limit recovery" for an antitrust action).	***H: Elkins v. Microsoft Corp.*, 817 A.2d 9, 15–17 (Vt. 2002)** (holding that "harmonization provision" 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, thus rejecting *Illinois Brick*); *see also* ***State v. Heritage Realty*, 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).
VA	***AT:*** **VA. CODE ANN. § 59.1-9.5 (West 2011)** (declaring unlawful "[e]very contract, combination or conspiracy in restraint of trade or commerce"). ***H:*** **VA. CODE ANN. § 59.1-9.17 (West 2011)** (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").	***H: Williams v. First Fed. Sav. & Loan Ass'n*, 651 F.2d 910, 930 (4th Cir. 1981)** (recognizing statutory mandate to harmonize state law with federal interpretations of comparable federal antitrust statutes).
WA	***AT:*** **WASH. REV. CODE ANN. § 19.86.030 (West 2012)** (declaring unlawful "[e]very contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce"). ***H:*** **WASH. REV. CODE ANN. § 19.86.920 (West 2012)** (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").	***H: Blewett v. Abbott Labs.*, 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 and any departure from federal law "must be for a reason rooted in our own statutes or case law and not in the general policy arguments that this court would weigh if the issue came before us as a matter of first impression").

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Overview of State RPM

STATE	LEGISLATION	LITIGATION
WV	***AT:* W. Va. Code Ann. § 47-18-3(a) (West 2012)** (declaring unlawful "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce"). ***PF:* W. Va. Code Ann. § 47-18-3(b)(1) (West 2012)** (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"). ***H:* W. Va. Code Ann. § 47-18-16 (West 2012)** (declaring legislative intent that statute "shall be construed liberally and in harmony with ruling judicial interpretations of comparable federal antitrust statutes").	***Kessel v. Monongalia Cnty. Gen. Hosp. Co.*, 648 S.E. 2d 366, 374–80 (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).
WI	***AT:* Wis. Stat. Ann. § 133.03 (West 2011)** (declaring illegal "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce"). ***IB:* Wis. Stat. Ann. § 133.18(1)(a) (West 2011)** (providing a right of action and treble damage remedy for "any person injured, directly or indirectly, by reason of" an antitrust violation).	***H: Emergency One v. Waterous Co.*, 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 ***Grams v. Boss*, 294 N.W.2d 473, 480 (Wis. 1980)**); *but cf.* ***Olstad v. Microsoft Corp.*, 700 N.W.2d 139, 144, 154–55 (Wis. 2005)** (finding that one of the major objectives of revisions made to the state's antitrust law in 1980 was to reverse the holding in *Illinois Brick*, and that Wisconsin's antitrust laws are to be interpreted "in a manner which gives the most liberal construction to achieve the aim of competition"). ***PF: Slowiak v. Hudson Foods, Inc.*, 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).
WY	***AT:* Wyo. Stat. Ann. § 40-4-101(a)(i) (West 2012)** (prohibiting "any plan, agreement, consolidation or combination of any kind whatsoever to prevent competition or to control or influence production or prices thereof").	***PF: Bulova Watch Co. v. Zale Jewelry Co.*, 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").

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