



Oppose the New York State 21st Century Antitrust Act: It's Bad for Business and Consumers!

- Members of the state Legislature are urged to reject the 21st Century Antitrust Act (S933A/A1812) because it is both anti-business and anti-consumer. If adopted, New York would be the only place in America where business transactions are subject to regulatory review by the Attorney General and private litigation based on foreign legal standards that are unfamiliar to U.S. businesses, courts, and regulators and are inconsistent with federal law.
- This legislation comes out of a national movement that intends to use New York as the stalking horse for federal antitrust reform. Advocates don't seem to care what price New York state would pay, including higher costs of doing business and higher prices for consumers, if this bill were to be enacted. Adopting an antitrust standard that is unique to New York would discourage job creation, business investment, and economic growth in New York. It would also clog the New York courts with cases they are unprepared to handle. There is legislation and regulatory change that would tighten antitrust law currently under consideration in Washington, D.C., and that is where these major national policy concerns should be addressed.
- The state's most respected legal experts have analyzed the New York bill and concluded that it would impact all industries and companies of every size. It would set a far lower and poorly defined standard of liability for businesses, known as the "abuse of dominance." Under this standard, any business or nonprofit institution could be sued if it can be considered "dominant" in its markets, such as a local grocery store or hospital serving a community where they have no or few direct competitors, significantly discouraging small businesses from forming in smaller communities where the business could be deemed "dominant" in its local region. It could also be a violation of the law to offer discounted prices or other marketing incentives and the fact that the offering would be beneficial to consumers would not be a legal defense.
- Under the bill, any business merger, acquisition, or transaction over \$10 million would be subject to review, delay, and litigation. (The federal threshold is \$101 million, or ten times greater.) New York has more than 27,000 small and mid-sized businesses with 25-99

employees that have average annual receipts of over \$11.2 million. All would be vulnerable to this law. Smaller businesses and nonprofits could also be affected if they are involved in a transaction valued at more than \$10 million.

- The city’s financial industry, which is the largest contributor to the state economy and tax rolls, would also be impacted because the bill does not exempt investment activity from the set of transactions subject to a 60-day delay under the proposed legislation. Similarly, any sale of commercial real estate, farmland, or even a transfer of assets through a will would be subject to a delay if the transaction is valued at more than \$10 million.
- There has been no impartial analysis by the legislature to assess the potential negative impact of this law on the state economy, on jobs, or on the tax base. In the absence of such analysis, it is irresponsible to even consider passage of this legislation.

Key Issues with the 21st Century Antitrust Act		
Current NY Antitrust Law	Proposed New Law	Actual Impact
Market share threshold of 70-90% to trigger New York Attorney General action or litigation	Market share threshold is 30-40%. New York would be the only state with this low threshold for prosecution or litigation.	Every business may be accused of being “dominant” if it has a significant share of its local market or is introducing a new product or reduced prices that increases its market share beyond the threshold.
Only covers acts by multiple firms acting together	Covers conduct by a single firm	Creates massive uncertainty for every business because there is no definition of what conduct is illegal that is not already illegal under federal law and exposes businesses to liability for practices that benefit workers and consumers.
Workers are covered in theory, but not always in practice	Seeks to protect workers from employer dominance and illegal mergers	This bill does nothing to provide better benefits for workers other than open every employer up to a strike suit claiming that it is “abusing” its dominant position as an employer.
No protection from non-compete restrictions or similar abuses	Protects workers from specific abuses like non-compete restrictions	Other policies already limit the use of non-competes and this issue should not be addressed in this context.
New York Attorney General is not entitled to advance notice of mergers	New York Attorney General gets advance notice of mergers	Federal law already requires pre-merger notification to the federal government for transactions that exceed \$101 million, which are the supposed target of antitrust legislation