

The Backlash Against Smart Business: Navigating State Anti-ESG Laws

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In recent years, companies and investors have embraced **environmental, social, and governance (ESG) principles**—not as ideology, but as smart business. Managing ESG risks and opportunities is now expected by investors seeking responsible returns, customers demanding transparency, and employees choosing purpose-driven workplaces. And when done right, it strengthens performance and builds long-term value.

Yet, some political leaders—despite describing themselves as champions of free markets—are pushing a wave of anti-ESG laws that restrict businesses and investors from factoring ESG risks and opportunities into their decisions. **To date, over 400 anti-ESG bills have been introduced, with 48 provisions passed across 22 states.**

This guide breaks down the anti-ESG playbook, shares key pathways to stay the course, and underscores the business risks of retreating from well-established, responsible practices.

Beyond the Acronym: The term ESG—which stands for environmental, social, and governance—has taken on many, sometimes conflicting, meanings across media, business, and investment circles. Coined over two decades ago, it describes an approach companies use to manage their footprint and responsibilities to stakeholders. ESG efforts encompass the policies, practices, strategies, and standards that guide how a company addresses environmental impact, treats people, and governs itself. Businesses may integrate ESG into their business models, investment decisions, organizational structures, or other parts of their operations. While debate continues over whether the term “ESG” still holds value, particularly as it has become politicized and linked to greenwashing, this guide moves past that debate. It focuses instead on how businesses can continue to manage their environmental, social, and governance risks and opportunities amid the rise of anti-ESG laws.

Inside the Anti-ESG Playbook

State anti-ESG laws differ in scope and structure, but most fall into **two main categories**:

- **Anti-boycott Laws:** These laws prohibit companies from refusing to do business with certain industries, such as fossil fuels or firearms.¹
- **Anti-ESG Consideration Laws:** These laws limit or prohibit public entities and managers of public funds from considering ESG factors in their decisions.

13
states have
passed **anti-boycott laws**

19
states have
passed **anti-ESG
consideration laws**

10
states have
passed **both
types of laws**

Both types of laws often include broad exceptions.

This may offer companies the opportunity to weigh ESG risks and opportunities within legal bounds. In many states, anti-boycott laws allow companies to refuse to do business with a customer or company for **ordinary business purposes**² or to **comply with other laws or regulations**.

Similarly, under many anti-ESG consideration laws, companies can still consider ESG factors when doing so aligns with **prudent investment practices** — for example, avoiding investments in fossil fuels to manage long-term risk, support sustainable growth, or attract the next generation of customers.

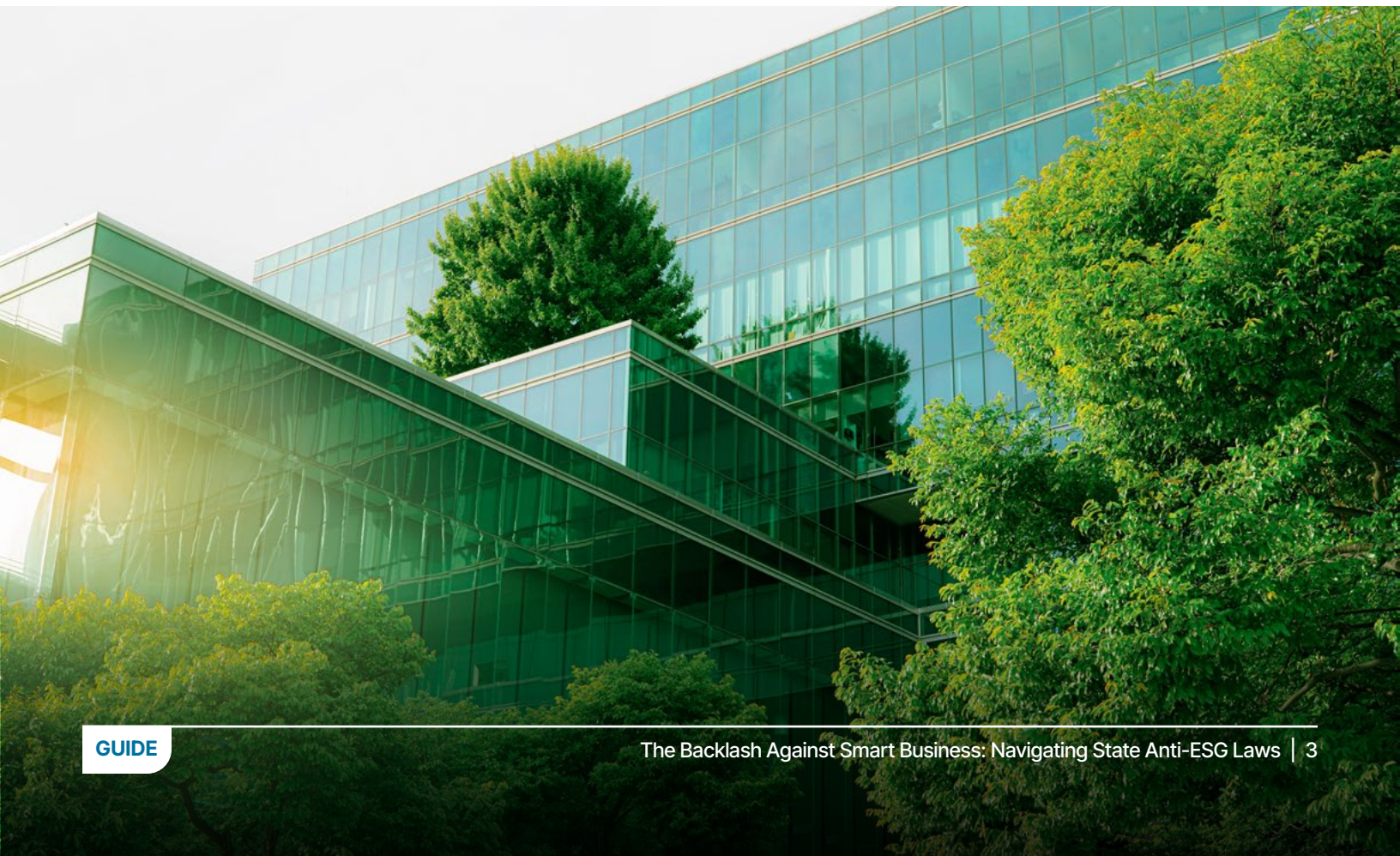
¹ Companies themselves often reject any description of their investment or business choices as a “boycott,” but that is the term commonly used in state anti-ESG legislation.

² This term is often defined loosely or not defined at all in most state laws.

Staying Smart, Ensuring Compliance

Think carefully before scaling down or abandoning ESG strategies in response to state anti-ESG laws. Many ESG strategies arguably fit within existing exceptions or are protected by established legal principles. Before making changes, consult legal counsel to determine whether one of the following exceptions or doctrines may apply to your efforts:

- **Business Purpose:** The plain text of anti-ESG laws often permit ESG strategies that **clearly support business performance** and are backed by an economic, risk, or compliance analysis, such as a bank declining a loan in an industry where it lacks expertise or a company meeting state sustainability disclosure requirements.
- **Fiduciary Duty:** Board directors, executive officers, investment managers, and others acting on behalf of beneficiaries have **duties of care and loyalty**, which may include considering ESG risks and opportunities that affect long-term performance.
- **Business Judgment Rule:** Business fiduciaries have discretion to make good-faith decisions on behalf of a business if they reasonably believe those decisions will **advance business interests**, including ESG-related actions.



Don't Pause — Prepare

To navigate the fast-changing anti-ESG legal landscape, businesses should take the following steps:

1. Understand the Law.

Identify which anti-ESG laws apply in the states where you operate and set up internal systems to track legal and regulatory compliance. Because there is no one-size-fits-all approach, the existence of an anti-ESG law does not automatically block ESG initiatives. Get clear on what each law actually prohibits and any exceptions that leave room to act.

2. Assess and Document Your Strategy.

Clearly show why and how your organization's responsible practices align with your mission, business strategy, investment objectives, and risk management. Keep a written record demonstrating that your activities serve a legitimate business purpose, consistent with fiduciary duties and the business judgment rule. Documentation can include how your initiatives:

- Strengthen financial performance;
- Mitigate risks from unstable investments;
- Comply with applicable laws or contractual obligations;
- Limit legal exposure;
- Maximize long-term shareholder value;
- Meet workforce and customer demand;
- Improve human capital management;
- Protect and increase brand value;
- Expand market reach and the customer base; and
- Position the company for long-term success.

3. Know Your Legal Options.

If an anti-ESG law harms your business—for example, through a cancelled contract, lost investment opportunity, or costly operational changes—you may have legal standing to challenge it. Consult legal counsel to evaluate potential claims and remedies.

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