HOUSE BILL REPORT
SB 5122

As Passed House:
March 26, 2025

Title: An act relating to enacting the uniform antitrust premerger notification act.

Brief Description: Enacting the uniform antitrust premerger notification act.

Sponsors: Senators Trudeau, Pedersen, Krishnadasan, Nobles, Salomon and Wellman; by request of Uniform Law Commission.

Brief History:
Committee Activity:
Civil Rights & Judiciary: 3/14/25, 3/19/25 [DP].
Floor Activity:
Passed House: 3/26/25, 59-39.

Brief Summary of Bill

- Requires certain parties filing premerger notification forms and documents with federal agencies to also file such forms and documents with the Washington Attorney General.
- Establishes confidentiality and reciprocity requirements.
- Establishes a civil penalty for violations.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Salahuddin, Thai and Walen.

Minority Report: Do not pass. Signed by 5 members: Representatives Walsh, Ranking Minority Member; Abell, Assistant Ranking Minority Member; Burnett, Graham and Jacobsen.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: John Burzynski (786-7133).

Background:

The Uniform Antitrust Pre-Merger Notification Act.
The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that drafts and proposes specific statutory language that may be adopted by states. In 2024 the ULC drafted the Uniform Antitrust Pre-Merger Notification Act (Notification Act), which creates a mechanism for a state attorney general to receive access to Hart-Scott-Rodino (HSR) filings at the same time as federal agencies and subject to similar confidentiality obligations.

The Hart-Scott-Rodino Antitrust Improvements Act.
The federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires companies proposing to engage in most significant mergers or acquisitions to file advance notice with the Federal Trade Commission and the United States Department of Justice Antitrust Division at least 30 days prior to closing (or, in the case of acquisitions out of bankruptcy or cash tender offers, 15 days prior to closing). The HSR notice form contains information about the transaction and each company's business. Filers must also submit certain transaction and business documents. Federal agencies rely on information submitted in an HSR filing to conduct an antitrust risk assessment and to identify transactions that require additional investigation to determine if they will violate antitrust laws if consummated.

Washington's Health Care Material Change Notice Requirements.
Washington requires health care providers and provider organizations to provide notice of certain mergers, acquisitions, or contracting affiliations to the Washington Attorney General. The required notice provides the Attorney General with information to determine whether an investigation under the Consumer Protection Act (CPA) is warranted for potential anticompetitive conduct and consumer harm.

Health care providers and provider organizations conducting business in Washington that file an HSR premerger notification with the Federal Trade Commission or the United Sates Department of Justice must provide a copy of the filing to the Attorney General. Providing a copy of the federal filing to the Attorney General satisfies the state law notice requirement for material changes among health care market participants.

Washington's Consumer Protection Act.
The Washington CPA prohibits various anticompetitive business practices, including unfair methods of competition; unfair or deceptive acts or practices in trade or commerce; the formation of contracts, combinations, or conspiracies in restraint of trade or commerce; monopolization of any part of trade or commerce; and acquisition of stock or assets where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

The Antitrust Division of the Office of the Attorney General investigates and prosecutes violations of the CPA's antitrust provisions and federal antitrust laws. The Attorney General may bring an action in the name of the state or on behalf of persons residing in the state to restrain and prevent CPA violations. In addition, a private party injured by a violation may bring an action to enforce the CPA.

Summary of Bill:

Premerger Notification Requirements.
A person filing a premerger notification with the United States pursuant to the Hart-Scott-Rodino Antitrust Improvements Act must also make a contemporaneous filing of the HSR form with the Washington Attorney General if: (1) the person has its principal place of business in Washington; (2) the person or a person it controls directly or indirectly had annual net sales in Washington of goods or services involved in the transaction of at least 20 percent of the HSR filing threshold; or (3) the person is a health care provider or provider organization that conducts business in Washington.

When the filer has its principal place of business in Washington, it must also file with the Attorney General a complete electronic copy of the documentary material filed with the federal HSR form.

At the request of the Attorney General, when the filer had annual net sales in excess of the 20 percent threshold or the filer is a health care provider or provider organization, it must also file with the Attorney General a complete electronic copy of the documentary material filed with the federal HSR form.

The Attorney General may not charge a fee in connection with the filing of the HSR form or related documentary material.

Confidentiality Requirements.
The Attorney General may not make public or disclose an HSR form or related documentary material filed under the Notification Act or provided by the attorney general of another state, the fact that such form or material was filed or provided, or the fact of the proposed merger. These forms, documents, and information are exempt from public inspection and copying under the Public Records Act. However, these forms, documents, and information may be disclosed in an administrative proceeding or judicial action if relevant and subject to a protective order.

The Attorney General is not precluded from sharing information with the Federal Trade Commission, United States Department of Justice, a successor agency, or the attorney general of another state subject to certain requirements.

Reciprocity.
The Attorney General may disclose an HSR form and related documentary materials to the

attorney general of another state that has enacted the Notification Act or a substantially similar act with confidentiality provisions that are at least as protective as the Notification Act's provisions. Before making such disclosure, the Attorney General must provide at least two business days of advance notice to the filer.

Civil Penalty.
The Attorney General may seek imposition of a civil penalty of not more than $10,000 per day of noncompliance for violations of the Notification Act's requirements, subject to procedural requirements.

Construction.
In applying and construing the Notification Act, courts are directed to consider the promotion of uniformity of the law among enacting jurisdictions.

Prospective Application.
The requirements of the Notification Act apply only to premerger notifications filed on or after its effective date.

Health Care Transactions.
A health care provider or provider organization that provides a copy of an HSR form to the Attorney General pursuant to the Notification Act is deemed to have satisfied the state law notice requirements for qualifying material change transactions among certain health care entities.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Under current law, when the federal government receives merger review filings the state does not receive copies or receives them late. This bill solves this problem without imposing undue burdens by requiring the same notice be provided to the state attorney general if the transaction has a nexus with Washington. The bill ensures all enforcers have access to the same information and work on the same timetable, and it improves the efficiency of merger review.

This bill facilitates the Attorney General's efforts to enforce the Consumer Protection Act, protect competition in the marketplace, and coordinate with the federal government. Concurrent filing with the state ensures timely review and encourages states to share resources. The bill allows state authorities to get involved earlier and provide clarity to

transaction parties. Corporations benefit because they can proceed with transactions in a timely manner. Antitrust enforcement is good for both businesses and consumers.

The bill provides that no fees may be charged for concurrent filing with the state and the filed materials must be kept confidential.

The bill comes from the Uniform Law Commission and underwent a balanced drafting process. The drafting committee included state enforcers, federal authorities, and merger and acquisition attorneys representing businesses. This bill has the support of the American Bar Association Antitrust Section. Other states are considering this legislation as well.

(Opposed) None.

Persons Testifying: Senator Yasmin Trudeau, prime sponsor; Kaitlin Wolff, Uniform Law Commission; and Travis Kennedy, Attorney General's Office.

Persons Signed In To Testify But Not Testifying: None.