SENATE BILL REPORT
SB 5122

As of January 20, 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: Law & Justice: 1/20/25.

Brief Summary of Bill

- Creates a process for the Attorney General to receive federal pre-merger notification forms and additional documentary material.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: 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 (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 HSR Antitrust Improvements Act of 1976 requires companies intending to engage in certain mergers or acquisitions to provide pre-merger notification—for example, an HSR form—to the United States Federal Trade Commission (FTC) and the Department of Justice (DOJ) before consummating these transactions. The reporting requirement applies to proposed

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transactions that satisfy certain size and other criteria, and each party to a transaction that meets the criteria must file notifications and wait a specified period, typically 30 days, before consummating the transaction. The waiting period enables the enforcement agencies to review whether the effect of the transaction will substantially lessen competition and, if necessary, to negotiate changes to the transaction or seek an injunction to stop the transaction.

Washington's Consumer Protection Act. The Washington Consumer Protection Act (CPA) prohibits various anticompetitive business practices, including 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 a corporation's 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 has authority to enforce federal antitrust law.

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 attorney general. The required notice provides the attorney general with information to determine whether an investigation under the CPA is warranted for potential anticompetitive conduct and consumer harm.

Summary of Bill: Uniform Antitrust Pre-Merger Notification Act. *Filing.* A person filing an HSR form with the federal government must simultaneously submit the same materials to the attorney general if:

- the person has a principal place of business in this state;
- the person or a person it controls directly or indirectly had annual net sales in this state of goods or services involved in the proposed merger transaction of at least 20 percent of the HSR filing threshold; or
- the person is a provider or provider organization conducting business in this state.

The attorney general may not charge a filing fee for filing the form or additional documentary material with the attorney general.

Confidentiality and Reciprocity. The attorney general may not publicize or disclose the HSR form, the additional documentary material, the proposed merger transaction, or the fact that the HSR form or additional document were filed or provided. The aforementioned information is exempt from the Public Records Act.

The attorney general may disclose the aforementioned information in the following circumstances:

- in judicial proceedings if the proposed merger is relevant to the judicial proceeding,

subject to a protective order;
- with the FTC or DOJ; or
- with other attorney generals whose state has enacted the Act or a substantively equivalent act that include similar confidentiality protections.

Civil Penalty. A person that fails to comply with the filing requirements may face a civil penalty of not more than $10,000 per day of noncompliance.

Washington's Health Care Material Change Notice Requirements. A provider or provider organization that provides a copy of an HSR form to the attorney general satisfies the required notice requirement for certain mergers, acquisitions, or contracting affiliations involving the provider or provider organization.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 9, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A strong antitrust process is good for business and consumers. The problem being solved with this bill is that when the federal government receives Hart-Scott-Rodino (HSR) filings, the states do not receive such filings or receives them late. This causes deals to linger in uncertainty, because states are equally entitled to enforce antitrust laws. Having parties to a merger and acquisition transaction file HSR forms concurrently with the attorney general would ensure timely review, promote efficiencies by encouraging states to share resources with each other, and is a better use of taxpayer dollars. There are no fees assessed against businesses for sharing the filing, the materials are kept confidential, and the corporations benefit because they can proceed with the transaction in a timely manner.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Dan Robbins, Uniform Law Commission; Kaitlin Wolff, Uniform Law Commission.

Persons Signed In To Testify But Not Testifying: No one.