

SENATE THIRD READING
SB 25 (Umberg)
As Amended May 27, 2025
Majority vote

SUMMARY

Establishes the Uniform Antitrust Premerger Notification Act, requiring certain merger notifications to be filed with the Attorney General (AG) and protecting the confidentiality of those filings.

Major Provisions

- 1) Enacts the Uniform Antitrust Premerger Notification Act and provides that the Act applies only to premerger notifications filed on or after January 1, 2026.
- 2) Requires a person who files a premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18a) to electronically file a copy of the Hart-Scott-Rodino (HSR) form with the California Attorney General within one business day of filing with federal authorities, if either of the following conditions are met:
 - a) The person has its principal place of business in California; or
 - b) The person, or a person it directly or indirectly controls, had annual net sales in California of the goods or services involved in the transaction of at least 20 percent of the applicable HSR filing threshold.
- 3) Requires any person who files pursuant to 2a) to include with the HSR form a complete electronic copy of any additional documentary material submitted in the federal filing.
- 4) Authorizes the Attorney General to request additional documentary material from a person filing pursuant to 2b), and requires that material to be submitted within seven business days after the request is received.
- 5) Prohibits the Attorney General from charging a fee for filing the initial form or additional materials, except as specified, and authorizes the Attorney General to charge:
 - a) A \$1,000 fee for filings under 2a); and
 - b) A \$500 fee for filings under 2b) or pursuant to a request under 4).
- 6) Provides that such fees be deposited into the Attorney General Antitrust Account, and permits fee adjustments every five years based on changes to the California Consumer Price Index.
- 7) Prohibits the Attorney General from publicly disclosing:
 - a) Any HSR form or additional documentary material filed under the Act;
 - b) Any HSR form or additional material received from another state attorney general;
 - c) The fact that a filing or disclosure occurred; or

- d) The existence of the proposed merger itself.
- 8) Exempts all forms and materials filed or disclosed pursuant to the Act from disclosure under the California Public Records Act.
- 9) Permits the Attorney General to disclose the above confidential materials subject to a protective order entered in a judicial or administrative proceeding where the proposed merger is relevant to the matter.
- 10) Clarifies that the Act does not:
 - a) Limit any other confidentiality or information-security obligation of the Attorney General;
 - b) Preclude sharing information with the Federal Trade Commission or U.S. Department of Justice Antitrust Division; or
 - c) Preclude the Attorney General from sharing information with the attorney general of another state that has enacted the Uniform Antitrust Premerger Notification Act or a substantively equivalent act. Requires that the other state's act include confidentiality provisions at least as protective as those under the Uniform Antitrust Premerger Notification Act.
- 11) Requires the Attorney General to provide at least two business days' advance notice to the filer before making any such disclosure provided in 10).
- 12) Authorizes the Attorney General to impose a civil penalty of up to \$10,000 per day for each day of noncompliance with the filing requirements, as provided.
- 13) Directs courts to construe the Act in a manner that promotes uniformity among jurisdictions that adopt similar legislation.
- 14) Defines key terms, including "premerger notification," "filing threshold," "Hart-Scott-Rodino form," "additional documentary material," "electronic," and "person."
- 15) Finds and declares that premerger filings contain highly sensitive, forward-looking business information, the public disclosure of which could cause material harm, facilitate insider trading, or enable anticompetitive behavior.
- 16) Justifies the confidentiality provisions of the Act as consistent with analogous protections under federal antitrust law.

COMMENTS

Under current law, California has no statutory requirement that merging parties submit Hart-Scott-Rodino (HSR) premerger notification filings to the Attorney General. As a result, California's Attorney General lacks timely access to HSR forms and accompanying documentary material filed with the Federal Trade Commission and the U.S. Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18a). These filings are categorically exempt from disclosure under the federal Freedom of Information Act (FOIA) (15 U.S.C. Section 18a(h)) and cannot be accessed by state AGs unless provided voluntarily or

through subpoena. This legal structure leaves California and other states dependent on time-consuming and uncertain subpoena processes to obtain merger-related information. By the time the AG issues and enforces a subpoena, the federal waiting period may be close to expiring, potentially hampering the AG's ability to conduct a meaningful, contemporaneous antitrust review of mergers with state-level competitive impacts.

From the perspective of merging parties, this reactive approach is also inefficient. Responding to state subpoenas creates costly delays and uncertainty, requiring parties to duplicate their efforts in addressing both federal and state concerns without a streamlined or coordinated process. The result is a dragged-out and duplicative merger review process that disadvantages both enforcers and businesses alike. SB 25 addresses this enforcement gap by requiring parties that file under the HSR Act to submit those same filings to the California Attorney General if they have sufficient nexus to the state. This ensures that the AG can concurrently review merger filings alongside federal authorities, rather than being relegated to a secondary position after key federal deadlines have passed.

In adopting this framework, SB 25 aligns California with the Uniform Antitrust Premerger Notification Act developed by the Uniform Law Commission and enacted in states such as Washington and Colorado. Section 16786 of the bill explicitly directs courts to promote uniformity with other jurisdictions adopting the Act, supporting consistency in multistate merger oversight while preserving strong confidentiality protections equivalent to federal law.

By establishing a modest and narrowly-tailored filing requirement, SB 25 enhances the Attorney General's ability to protect competition and consumers in California markets—especially in sectors such as healthcare, retail, and technology—without imposing burdensome new obligations on businesses already filing under federal law.

Public Records Act exemption. The Public Records Act exemption in SB 25 aligns with federal law and complies with California's constitutional open records provisions by balancing transparency with the need to protect competitively sensitive premerger information.

Proposed Business and Professions Code Section 16783 prohibits the Attorney General from publicly disclosing HSR forms, additional documentary material, and related information submitted under the bill's filing requirements. It further exempts such information from disclosure under the California Public Records Act (CPRA), consistent with the structure of 15 U.S.C. Section 18a(h). Like the federal provision, SB 25 allows disclosure only under a protective order issued in a judicial or administrative proceeding if the proposed merger is relevant to that proceeding.

This exemption also complies with the California Constitution. Article I, section 3(b)(1) of the California Constitution establishes a general right of public access to the meetings and records of public agencies, but expressly permits the Legislature to enact statutes that limit this right so long as the limitation is accompanied by findings demonstrating the interest protected and the need for that protection. SB 25 includes such findings in Section 2 of the bill, which states that premerger notification materials are "highly sensitive, future-looking business information" and that public release "could cause material harm to the filing companies and foster securities law violations and anticompetitive conduct by third parties." These findings justify the confidentiality provision as a narrowly drawn exception that serves a compelling governmental interest in protecting the integrity of antitrust enforcement and the confidentiality of proprietary business information.

Enforcement. SB 25 provides the California Attorney General with both enforcement authority and limited cost-recovery mechanisms to support the administration of the state's new premerger notification framework. A person who fails to comply with the filing requirements—by not submitting the HSR forms or any required additional documentary material as set forth in Business and Professions Code Section 16782—is subject to a civil penalty of up to \$10,000 per day of noncompliance. This penalty aligns with the federal enforcement structure under 15 U.S.C. Section 18a(g)(1), which authorizes the federal government to impose daily fines for violations of the HSR Act, and is intended to deter noncompliance and ensure that the Attorney General receives timely notice of covered transactions.

In addition to enforcement authority, SB 25 permits the Attorney General to collect modest filing fees to offset administrative costs. A \$1,000 fee may be charged for filings by parties with their principal place of business in California and a \$500 fee may be charged for filings based on substantial in-state sales or in response to a request for additional documents. All collected fees must be deposited into the Attorney General Antitrust Account, and the bill authorizes the Attorney General to adjust the fee levels no more than once every five years to reflect changes in the California Consumer Price Index. These limited fees, combined with meaningful civil penalties, provide a balanced approach that enables effective oversight while minimizing burdens on businesses already subject to federal merger review.

According to the Author

SB 25 aims to make the merger review process more efficient to the benefit of both the California Attorney General and merging parties. Federal anti-trust law, namely the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"), requires that companies proposing to engage in most significant mergers and acquisitions file a notice to the Federal Trade Commission and the Justice Department's Antitrust Division. These notices detail information such as corporate structure and presentations about the merger presented to the company's board of directors. HSR filings enable federal anti-trust agencies to efficiently engage with merging parties by allowing the agencies to scrutinize and challenge mergers and acquisitions before they are finalized.

However, state AGs do not have access to these filings because of the HSR's strict confidentiality requirement. The subpoena process for the filings is time-consuming and disadvantages state AGs during merger review. Furthermore, the subpoena process for HSR filings creates additional uncertainty for the merging parties, causing them to experience further costs in time and resources to address the state AGs concerns on top of the federal concerns. This creates a dragged out merger process that is not desirable for both state AGs and businesses.

SB 25 attempts to solve this issue that hampers the merger review process by providing the AG with earlier access to HSR filings. This would not only give the AG more time to object to anti-competitive mergers, but also give businesses more timely warnings to address concerns from the AG.

Arguments in Support

The California Commission on Uniform State Laws, the sponsor of the bill, writes that the notifications provided to the federal government under the HSR:

[...] provide substantial information about the proposed merger, and allow federal agencies to timely determine if there are any potential antitrust issues. However, under current state

law, businesses are not required to provide the premerger notifications to the State of California. As a result, the state often does not timely learn of the details of a proposed merger deal that could have a substantial impact on local competition. This often leads to delayed subpoenas and duplicative and unnecessary expenses for the state and the business parties.

SB 25 solves this problem. [...] SB 25 will allow for California to make timely decisions on proposed merger deals, thereby reducing unnecessary litigation and providing businesses with enhanced certainty about the mergers in a timely manner.

Arguments in Opposition

A coalition of business communities, including the California African American Chamber of Commerce, the California Hispanic Chamber of Commerce, and the Asian Business Association of San Diego, submitted a letter opposing this measure long after policy committees finished hearing this bill. They argue:

SB 25 unnecessarily allows the sharing of merger documents between states without confidentiality protections that the merging parties can review and imposes costs and administrative burden on transactions. Under the status quo, the Attorney General already has the power to obtain merger filings from the federal government and regularly does so upon request and upon entering into direct confidentiality agreements with the merging parties. The Attorney General already can review transactions and raise competition related concerns and claims. SB 25 simply adds administrative and legal costs by duplicating the federal process unnecessarily.

In practice, the administrative and legal costs and lack of sufficient confidentiality protections could place California at a competitive disadvantage, undermining our state's ability to attract new industries, foster innovation, and remain a leader in national and global markets.

SB 25 imposes unnecessary burdens on businesses that represent the future of California's inclusive economy. Instead of encouraging responsible growth and innovation, it would penalize good-faith efforts to build, invest, and scale in California.

CTIA, the trade association for the wireless communications industry raise concerns about this bill, opposing unless amended. Specific concerns include:

- 1) Attorneys general are allowed to share merger documents with another state that has enacted the Uniform Antitrust Premerger Notification Act, or *a substantively equivalent act*, leaving to interpretation the level of confidentiality protection that would be afforded and without the engagement of the merging parties.
- 2) The timeframes for filing the Hart-Scott-Rodino forms with an attorney general, as well as for submission of additional documents, are unrealistic given the administrative effort it would entail.
- 3) There is no obligation for merger documents to be returned or destroyed after review by an attorney general.
- 4) Civil penalties can be assessed without providing an opportunity to cure.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Ongoing costs (AG Antitrust Account Fund) to the Department of Justice (DOJ), likely in the hundreds of thousands of dollars annually, for additional staffing to review premerger notifications, review proposed mergers, and enforce the bill's filing requirements. DOJ anticipates costs of \$516,000 in fiscal year (FY) 2025-26 and \$921,000 annually thereafter for software licensing and four staff positions: a deputy attorney general, senior legal analyst, legal secretary, and research data specialist. The bill may result in additional long term costs to DOJ if the department pursues more antitrust enforcement actions based on premerger filings. DOJ's costs may be offset to some extent by the fees the bill authorizes the department to collect and any civil penalties collected by the department through enforcement actions.
- 2) Possible cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate enforcement actions relating to the bill's filing requirements and antitrust enforcement actions. Actual costs will depend on the number of actions filed and the amount of court time needed for each action. Court costs may be offset to some extent by the expected decrease in court workload related to DOJ subpoenas for premerger information. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations.

VOTES

SENATE FLOOR: 36-1-3

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Strickland

ABS, ABST OR NV: Hurtado, Reyes, Valladares

ASM JUDICIARY: 10-0-2

YES: Kalra, Dixon, Garcia, Bryan, Connolly, Harabedian, Pacheco, Papan, Lee, Zbur

ABS, ABST OR NV: Tangipa, Sanchez

ASM APPROPRIATIONS: 11-1-3

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache

NO: Dixon

ABS, ABST OR NV: Sanchez, Ta, Tangipa

UPDATED

VERSION: May 27, 2025

CONSULTANT: Shiran Zohar / JUD. / (916) 319-2334

FN: 0001301