

UNFINISHED BUSINESS

Bill No: SB 25
Author: Umberg (D)
Amended: 1/14/26 in Assembly
Vote: 21

SENATE JUDICIARY COMMITTEE: 12-0, 4/8/25

AYES: Umberg, Niello, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Wahab, Weber Pierson, Wiener

NO VOTE RECORDED: Valladares

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/23/25

AYES: Caballero, Seyarto, Cabaldon, Grayson, Richardson, Wahab

NO VOTE RECORDED: Dahle

SENATE FLOOR: 36-1, 6/2/25

AYES: 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

NOES: Strickland

NO VOTE RECORDED: Hurtado, Reyes, Valladares

ASSEMBLY FLOOR: 52-17, 1/22/26 - See last page for vote

SUBJECT: Antitrust: premerger notification

SOURCE: California Commission on Uniform State Laws

DIGEST: This bill (1) requires a person who is obligated to file a notification pursuant to the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) to file a copy of that form and any additional documentation, as specified, with the Attorney General (AG) if the person meets certain requirements; (2) prohibits the AG from disclosing the information received, with

limited exceptions, and (3) authorizes the AG to impose a civil penalty for a violation of the filing requirement.

Assembly Amendments of 1/14/26 change the date this bill would apply to only premerger notifications filed on or after January 1, 2027.

ANALYSIS:

Existing federal law:

- 1) Establishes the Sherman Antitrust Act of 1890 (Sherman Act). (15 United States Code (U.S.C.) §§ 1-7.) Makes illegal, under the Sherman Act, every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the states or with foreign nations. (15 U.S.C. § 1.) Authorizes a state attorney general to bring a civil action in the name of the state in any district court of the United States having jurisdiction over the defendant to secure monetary relief, as provided, for violations of the Sherman Act. (15 U.S.C. § 15c.)
- 2) Establishes the Clayton Act. (15 U.S.C. §§ 12-27.) Defines “antitrust laws” to include the Sherman Act, certain provisions of the Wilson Tariff Act, and the Clayton Act, as amended. (15 U.S.C. § 12.) Makes illegal the acquiring, by a person engaged in commerce, of stock or other share capital or assets of another person also engaged in commerce or in any activity affecting commerce, where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly. (15 U.S.C. § 18.)
- 3) Establishes the HSR Act to require businesses to file pre-merger notifications for certain transactions with the Federal Trade Commission (FTC), as specified, and provides a waiting period before the merger may be commenced. (15 U.S.C. § 18a.) Declares unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce to be unlawful, and authorizes the FTC to enforce these provisions, with certain exceptions. (15 U.S.C. § 45.)

Existing state law:

- 1) Establishes the Cartwright Act as California’s antitrust law that prohibits anticompetitive activity. (Business (Bus.) & Professions (Prof.) Code §§ 16700 et. seq.) Provides that, except as expressly provided, every trust is unlawful, against public policy, and void. (Bus. & Prof. Code § 16726.) Authorizes the

AG to bring an action on behalf of the state or any of its political subdivisions or public agencies for a violation of the Cartwright Act or any comparable federal law, as provided. (Bus. & Prof. Code §§ 16750 et. seq.) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)

- 2) Establishes the Unfair Competition Law, which provides for a civil penalty for unfair competition, defined to include any unlawful, unfair, or fraudulent business act or practice and any unfair, deceptive, untrue, or misleading advertising. (Bus. & Prof. Code §§ 17200 et. seq.)
- 3) Prohibits, under the Unfair Practices Act, acts which injure competition, including sales below cost, locality discrimination, and secret rebates or unearned discounts. (Bus. & Prof. Code §§ 17000 et. seq.)

This bill:

- 1) Enacts the Uniform Antitrust Premerger Notification Act (Act), and provides that the Act only apply to a premerger notification filed on or after January 1, 2026.
- 2) Requires a person who files a pre-merger notification form under the HSR Act to file that form with the AG within one business day of filing that form if either of the following apply:
 - a) the person has its principal place of business in this state; or
 - b) the person or a person it controls directly or indirectly had annual net sales in this state of the goods or services involved in the transaction of at least 20% of the filing threshold.
- 3) Requires a person filing under 2)a), above, to include a copy of any additional documentary material when filing with the AG.
- 4) Provides that, upon request of the AG, a person filing under 2)b), above, must also file a copy of any additional documentary material to the AG within seven business days after receipt of the request.
- 5) Prohibits the AG from charging a fee connected with the filing of the initial form or any additional documentary material, except as specified.

- 6) Prohibits the AG from disclosing or making public any of the following:
 - a) an HSR Act form filed pursuant to 2), above;
 - b) any additional documentary material filed pursuant to 2), above;
 - c) an HSR Act form or additional documentary material provided by the attorney general of another state;
 - d) the fact that a form or additional documentary material was filed or provided by the attorney general of another state; and
 - e) the merger proposed in the form.
- 7) Provides that a form, additional documentary material, and other information listed in 6), above, are exempt from disclosure under the California Public Records Act (CPRA).
- 8) Authorizes the AG to disclose the information listed in 6), above, subject to a protective order entered by an agency, court, or judicial officer in an administrative proceeding or judicial action, if the proposed merger is relevant to the proceeding or action.
- 9) Specifies that the bill does not do any of the following:
 - a) limit any other confidentiality or information-security obligation of the AG;
 - b) preclude the AG from sharing information with the FTC or the U. S. Department of Justice Antitrust Division, or a successor agency; or
 - c) share information with the attorney general of another state, as provided in 10), below.
- 10) Authorizes the AG to disclose an HSR Act form and additional documentary information with the attorney general of another state that enacts the Uniform Antitrust Premerger Notification Act or a substantively equivalent act, so long as the other state's act includes confidentiality provisions at least as protective as the confidentiality provisions of the Uniform Antitrust Premerger Notification Act. Requires the AG to give at least two business days-notice to the filer before making a disclosure to the attorney general of another state.
- 11) Authorizes the AG to impose a civil penalty of not more than \$10,000 per day of noncompliance on a person that fails to comply with 2) through 4), above.
- 12) Provides that in applying and construing the Act a court is to consider the promotion of uniformity of the law among jurisdictions that enact it.

- 13) Defines various terms under the Act.
- 14) States that the Legislature finds and declares that the premerger notification information and materials subject to this act are highly sensitive, future-looking business information. Release of these materials outside of law enforcement and investigatory purposes could cause material harm to the filing companies and foster securities law violations and anticompetitive conduct by third parties. This is why these filings are confidential at the federal level and must remain confidential at the state level.

Comments

The HSR Act amended the Clayton Act to require businesses to file notifications with the FTC and the Antitrust Division of the federal Department of Justice before a merger of significant size occurs so that the transaction can be reviewed to ensure it will not violate federal antitrust laws – i.e. may substantially lessen competition or tend to create a monopoly.¹ A waiting period applies after the filing of an HSR Act form before the transaction can be completed. If federal regulators require further information or documentation to assess the merger, the waiting period can be extended or the federal regulators can file an injunction to stop the transaction from occurring. As of February 2025, a transaction that exceeds \$126.4 million must be reported under the HSR Act, and filers must pay a filing fee that ranges from \$30,000 (for transactions under \$179.4 million) to \$2,390,000 (for transaction \$5.555 billion or more).² All information and documents submitted to the federal government under the HSR Act are confidential and exempt from disclosure to the public under the Freedom of Information Act, with specified exceptions including in certain judicial or administrative proceedings.

In 2022, the California Law Revision Commission (CLRC) was granted approval by the Legislature to study topics relating to antitrust law and its enforcement. (ACR 95 (Cunningham, Chapter 147, Statutes of 2022)) As a result of this, the CLRC formed eight working groups to study various topics related to antitrust law, including mergers and acquisitions.³ In the CLRC's report on mergers and acquisitions it was noted that at the time of the report being written that "the

¹ 15 U.S.C. § 18.

² *New HSR threshold and filing fees for 2025*, FTC, (Feb. 6, 2025), available at <https://www.ftc.gov/enforcement/competition-matters/2025/02/new-hsr-thresholds-filing-fees-2025>.

³ *Antitrust Law – Study B-750*, Cal. Law Rev. Comm., (rev. Mar. 25, 2025) available at <https://clrc.ca.gov/B750.html>.

California Attorney General’s office reviews only about five mergers per year, most of them in conjunction with the relevant federal agency.”⁴

The Uniform Law Commission (ULC) provides non-partisan legislation to states with the goal of offering uniform rules and procedures on various legal issues. The Uniform Antitrust Premerger Notification Act was drafted and proposed by the ULC in 2024. The ULC states that the uniform act: improves state attorneys general’s ability to investigate potential mergers; places no significant new burdens on business or state attorneys generals; provides strong confidentiality protections; and offers the potential for cooperation between enacting states.⁵ As of the time this analysis was written, seven states—California, Colorado, Hawaii, New Mexico, Washington, West Virginia, and Utah—and the District of Columbia have introduced legislation to enact the uniform act.⁶

This bill is substantially similar to the ULC’s Uniform Antitrust Premerger Notification Act. This bill requires a person who is obligated to file a pre-merger notification under the HSR Act to file a copy of that notice with the AG if: (1) the person has its principal place of business in California, or (2) the person or a person it controls directly or indirectly had annual net sales in this state of the goods or services involved in the transaction of at least 20% of the filing threshold. In order to protect the sensitive business information included in the filing, this bill makes that information confidential and not subject to disclosure under the CPRA. The only exceptions to this are: (1) the information can be released subject to a protective order entered by an agency, court, or judicial officer in an administrative proceeding or judicial action if the proposed merger is relevant to the proceeding or action, and (2) to the attorney general of another state that enacts the Uniform Antitrust Premerger Notification Act, so long as the other state’s act includes confidentiality provisions that are as protective as the confidentiality provisions of the Act. The bill also authorizes the AG to impose a civil penalty of not more than \$10,000 per day for noncompliance of the filing requirement.

California generally recognizes that public access to information concerning the conduct of the people’s business is a fundamental and necessary right. At the same time, the state recognizes that this right must be balanced against the right to

⁴ *California Antitrust Law and Mergers*, Cal. Law Rev. Comm. fn. 30, at p. 16, available at <https://clrc.ca.gov/pub/Misc-Report/ExRpt-B750-Grp2.pdf>.

⁵ *Why Your State Should Adopt the Uniform Antitrust Pre-Merger Notification Act*, Uniform Law Comm., available at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=334dd57b-7d3f-0524-acc0-9256891a4cc2&forceDialog=0>.

⁶ 2024 Antitrust Pre-Merger Notification Act: Legislative Bill Tracking, Uniform Law Comm. available at <https://www.uniformlaws.org/committees/community-home?communitykey=6bf5d101-d698-4c72-b7c1-0191302a6a95#LegBillTrackingAnchor>.

privacy. The general right of access to public records may, therefore, be limited where the Legislature finds a public policy reason necessitating the limit on access. In light of the proprietary and sensitive nature of the information contained in an HSR Act filing form and additional documentary information, this bill's finding on the need for limiting access to this information seems warranted.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

The Senate Appropriations Committee writes:

Unknown, potentially significant costs to the DOJ, resulting from the implementation of this bill, with annual costs potentially reaching into the millions of dollars (General Fund). These costs would be associated with the development, implementation, and maintenance of a secure electronic filing system capable of preventing the inadvertent disclosure of confidential or sensitive information. Additional ongoing expenditures would be required for staff to review submitted notices for statutory compliance and for legal costs for associated litigation. Notably, this bill prohibits the imposition of filing fees, thereby removing the DOJ's ability to offset expenditures.

Cost pressures to the state funded trial court system (Trial Court Trust Fund, General Fund) by allowing the Attorney General to bring civil penalties for violations of this bill and by authorizing disclosure of specified materials pursuant to a protective order. Cost pressures may also arise to the extent that this bill contributes to litigation regarding potential business mergers that otherwise would not have been brought. It is unclear how many proceedings would actually be commenced that otherwise would not have as a result of this bill. The fiscal impact of this bill to the courts will depend on many unknown factors, including the number of proceedings and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff workload. The Governor's 2025-26 budget proposes a \$40 million ongoing increase in discretionary funding from the General Fund to help pay for increased trial court operation costs beginning in 2025-26. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations. If funding is not provided for the new workload created by this bill, it may result in delays and prioritization of court cases.

SUPPORT: (Verified 1/22/26)

California Commission on Uniform State Laws (sponsor)
Media Alliance
Uniform Law Commission

OPPOSITION: (Verified 1/22/2026)

None received

ARGUMENTS IN SUPPORT: The author writes:

SB 25 aims to make the merger review process more efficient to the benefit of both the California Attorney General (AG) 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 antitrust 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 anticompetitive mergers, but also give businesses more timely warnings to address concerns from the AG. 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.

ASSEMBLY FLOOR: 52-17, 1/22/26

AYES: Aguiar-Curry, Ahrens, Alvarez, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Alanis, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Johnson, Macedo, Patterson, Ta, Tangipa, Wallis

NO VOTE RECORDED: Addis, Arambula, Bonta, Flora, Lackey, Muratsuchi, Nguyen, Quirk-Silva, Celeste Rodriguez, Sanchez, Schiavo

Prepared by: Amanda Mattson / JUD. / (916) 651-4113
1/23/26 15:39:07

**** END ****