

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 25 (Umberg)
Version: March 25, 2025
Hearing Date: April 8, 2025
Fiscal: Yes
Urgency: No
AM

SUBJECT

Antitrust: premerger notification

DIGEST

The bill requires a person who is obligated to file a notification pursuant to the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 to file a copy of that form and any additional documentation, as specified, with the Attorney General (AG) if the person meets certain requirements. The bill prohibits the AG from disclosing the information received, with limited exceptions, and authorizes the AG to impose a civil penalty for a violation of the filing requirement.

EXECUTIVE SUMMARY

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) requires businesses to file notifications before a merger with the Federal Trade Commission (FTC) and the Antitrust Division of the federal Department of Justice for certain acquisitions. This bill enacts the Uniform Antitrust Premerger Notification Act, which requires any person who must file a notification under the HSR Act to additionally file a copy of the notice with the AG if that person has its principal place of business in this state or has annual net sales in this state of the goods or services involved in the transaction of at least 20 percent of the federal filing threshold. The bill is sponsored by the California Commission on Uniform State Laws and supported by Media Alliance and the Uniform Law Commission. No timely opposition was received by the Committee.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Sherman Antitrust Act of 1890 (Sherman Act). (15 U.S.C. §§ 1-7.)
 - a) 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.)
 - b) 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.)
 - a) 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).
 - b) 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 FTC, as specified, and provides a waiting period before the merger may be commenced. (15 U.S.C. § 18a.)
- 4) 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. (Bus. & Prof. Code §§ 16700 et. seq.)
 - a) Provides that, except as expressly provided, every trust is unlawful, against public policy, and void. (Bus. & Prof. Code § 16726.)
 - b) 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.)
 - c) Makes every trust unlawful, against public policy, and void, except as exempted under the Cartwright Act. (Bus. & Prof. Code, § 16726.)
- 2) Defines a “trust” to mean a combination of capital, skill, or acts by two or more persons to create or carry out restrictions in trade or commerce, to limit or reduce

the production or increase the price of merchandise or of any commodity, to prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or any commodity, and to enter into contracts or agreements that agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any article or commodity, that its price might in any manner be affected. (Bus. & Prof. Code § 16720.)

- 3) 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.)
- 4) 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.)
- 5) Requires any nonprofit corporation that operates or controls a health facility, or operates or controls a facility that provides similar health care, to provide written notice to, and to obtain the written consent of, the AG prior to entering into any agreement or transaction, as provided. (Corp. Code § 5914(a).)
- 6) Prohibits a person from acquiring any voting securities or assets of a retail grocery firm or retail drug firm unless both parties give, or in the case of a tender offer, the acquiring party gives, written notice to the AG no less than 180 days before the merger, as specified. (Corp. Code §§ 14700 et. seq.)
- 7) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 8) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 7920.000 et. seq.)
 - a) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)

- b) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
- c) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530(a).)

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 contemporaneously file that form with the AG 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 percent 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 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.
- 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 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.
 - a) 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.
 - a) "Additional documentary material" means the additional documentary material filed with an HSR Act form.
 - b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - c) "Filing threshold" means the minimum size of a transaction that requires the transaction to be reported under the HSR Act in effect when a person files a premerger notification.
 - d) "Hart-Scott-Rodino Act" means Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a), as amended.
 - e) "Hart-Scott-Rodino form" means the form filed with a premerger notification, excluding additional documentary material.
 - f) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.
 - g) "Premerger notification" means a notification filed under the HSR Act with the FTC or the U. S. Department of Justice Antitrust Division, or a successor agency.
 - h) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.
- 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

1. Stated need for the bill

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.

2. The HSR Act

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.

3. California Law Revision Commission – antitrust law and its enforcement

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, Ch. 147, Stat. 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 California Attorney General's office reviews only about five mergers per year, most of them in conjunction with the relevant federal agency."⁴

4. Uniform Antitrust Premerger Notification Act

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

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>.

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>.

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. The 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 percent of the filing threshold. A person with their principal place of business in California is required to also include all additional documentary material submitted to the federal government when filing with the AG, whereas all other filers are only required to submit that information upon request of the AG. In order to protect the sensitive business information included in the filing, the 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.

5. Limiting disclosure of a public record

Access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide general election),⁷ which amended the California Constitution to specifically protect the right of the public to access and obtain government records: “The people have the right of access to information concerning the conduct of the people’s business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, sec. 3 (b)(1).) In 2014, voters approved Proposition 42 (Jun. 3, 2014, statewide direct primary election)⁸ to further increase public access to government records by requiring local agencies to

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>.

⁷ Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004))

⁸ Prop. 42 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 3 (Leno, Ch. 123, Stats. 2013))

comply with the CPRA and the Ralph M. Brown Act⁹, and with any subsequent statutory enactment amending either act, as provided. (Cal. Const., art. I, sec. 3 (b)(7).)

Under the CPRA, public records are open to inspection by the public at all times during the office hours of the agency, unless they are exempt from disclosure. (Gov. Cod § 7922.525.) A public record is defined as any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.). Additionally, some records are prohibited from disclosure or are specifically stated to not be public records. (see Gov. Code § 7924.110(a).)

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 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, the bill's finding on the need for limiting access to this information seems warranted.

6. Amendments

The bill currently references "business days" in one place and "days" in another. In order to be consistent, the author has agreed to amend the bill to say "business days" throughout. Additionally, the bill requires a person to contemporaneously file a copy of the HSR Act form with the AG. For ease of enforcement, the author has agreed to amend the bill to require a copy of the HSR Act form be filed within one business day of filing with the federal government.

The specific amendments are as follows:

Amendment 1

On page 3, in line 15, strike out "contemporaneously"

⁹ The Ralph M. Brown Act is the open meetings laws that applies to local agencies. (Gov. Code §§ 59450 et. seq.)

Amendment 2

On page 3, in line 16, after “General” insert:

Within one business day of filing with the federal government

Amendment 3

On page 3, in line 28, after “seven” insert:

business

7. Statements 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.

SUPPORT

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

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 3129 (Wood, 2024) would have required a private equity group or hedge fund to provide written notice to, and obtain the written consent of, the Attorney General prior to certain transaction with various health care facilities or providers, as specified. AB 3129 was vetoed by Governor Newsom stating the Office of Health Care Affordability (OHCA) “was created as the responsible state entity to review proposed health care transactions, and it would be more appropriate for the OHCA to oversee these consolidation issues as it is already doing much of this work.”

AB 853 (Maienschein, Ch. 457, Stats. 2023) prohibits a person from acquiring any voting securities or assets of a retail grocery firm or retail drug firm unless both parties give, or in the case of a tender offer, the acquiring party gives, written notice to the AG no less than 180 days before the merger, as specified.

ACR 95 (Cunningham, Ch. 147, Stat. 2022) granted the California Law Revision Commission approval to study topics relating to antitrust law and its enforcement.
