

ALERT MEMORANDUM

Washington State Enacts Uniform Antitrust Premerger Notification Act

May 1, 2025

Last month, Washington became the first state to enact a broad antitrust premerger notification requirement. Under this new law, merging parties who meet certain threshold conditions will be required to submit a copy of their Hart-Scott-Rodino (“HSR”) form to the Washington State Attorney General.¹ Washington state was among several states that already had a state-specific premerger notification requirement for healthcare providers.² This new law expands the notification requirement to apply to all industries if certain thresholds are met. The law will go into effect on July 27, 2025, and will apply to HSR filings made on or after this date. Other states are in the process of adopting, or are considering adopting, similar legislation, including California, Colorado, Hawaii, Nevada, Utah, West Virginia, and Washington, DC, among others.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.
NEW YORK

Joseph Kay
+1 212 225 2745
jkay@cgsh.com

Puja Patel
+1 212 225 2732
pujapatel@cgsh.com

SILICON VALLEY /
SAN FRANCISCO

Brian Byrne
+1 650 815 4110
bbyrne@cgsh.com

George Cary
+1 415 796 4410
gcary@cgsh.com

WASHINGTON DC

Matthew Bachrack
+1 202 974 1662
mbachrack@cgsh.com

Leah Brannon
+1 202 974 1508
lbrannon@cgsh.com

Jeremy Calsyn
+1 202 974 1522
jcalsyn@cgsh.com

Daniel Culley
+1 202 974 1593
dculley@cgsh.com

Alan Freedman
+1 202 974 1647
afreedman@cgsh.com

David Gelfand
+1 202 974 1690
dgelfand@cgsh.com

Bruce Hoffman
+1 202 974 1784
bhoffman@cgsh.com

Steven Kaiser
+1 202 974 1554
skaiser@cgsh.com

Blair K. Matthews
+1 202 974 1791
bmatthews@cgsh.com

Kenneth Reinker
+1 202 974 1743
kreinker@cgsh.com

Ryan Shores
+1 202 974 1876
rshores@cgsh.com

¹ S.B. 5122, 69 Leg., 2025 Sess. (Wash. 2025), available at <https://lawfilesexxt.leg.wa.gov/biennium/2025-26/Pdf/Bills/Senate%20Passed%20Legislature/5122.PL.pdf?q=20250408084052>.

² Wash. Rev. Code § 19.390.010 et seq., available at <https://app.leg.wa.gov/RCW/default.aspx?cite=19.390>.
clearygottlieb.com



I. Who is impacted?

The new Washington premerger notification requirement applies to merging parties who file an HSR form and meet one of the following conditions³:

- The party has its principal place of business in the state of Washington;
- The party or a person it controls directly or indirectly had annual net sales in Washington of the goods or services involved in the transaction of at least 20 percent of the HSR filing threshold, which amounts to \$25.28 million based on the current \$126.4 million filing threshold⁴; or
- The party is a healthcare provider, as defined in the prior Washington State premerger notification law specific to the healthcare industry (RCW 19.390.020), and conducts business in the state of Washington.⁵

II. What are the requirements?

If subject to the premerger notification requirement under one of the three conditions, a party must submit a copy of its HSR form to the Washington State Attorney General contemporaneously with the federal filing.⁶ If the party has its principal place of business in Washington, it must also submit to the Attorney General a complete copy of the documentary materials filed with the HSR form (e.g., “Business Documents” under the new HSR rules).⁷ If the party does not have its principal place of business in Washington, the Attorney General may still request a complete copy of the documentary materials, in which case the party must submit them no later than seven days after receiving the request.⁸

The law specifies that the Attorney General may not charge a fee connected with this premerger notification requirement.⁹

III. What are the penalties?

Failure to file may subject non-compliant parties to a civil penalty of up to \$10,000 per day of non-compliance.¹⁰

IV. Are these filings confidential?

These filings are confidential and may not be made public or disclosed, subject to limited exceptions.¹¹ The Attorney General may disclose an HSR form, documents, or information contained therein, in an administrative proceeding or judicial action in which the proposed merger is relevant, subject to a protective order entered by the agency or court.¹²

The Attorney General may also share information with the Federal Trade Commission and the United States Department of Justice Antitrust Division.¹³

Under a reciprocity provision, the Washington Attorney General may also share the HSR filings with the Attorney General of another state that has enacted a similar uniform antitrust premerger notification act, so long as it includes confidentiality provisions at least as protective as the Washington State act.¹⁴ The Washington Attorney General must provide notice to the parties at least two business days before making a disclosure under this reciprocity provision.¹⁵

V. Are there similar requirements in other states?

No other state has enacted a broad premerger notification bill as of yet, but several state legislatures

³ S.B. 5122.

⁴ FTC, New HSR thresholds and filing fees for 2025 (Feb. 6, 2025), available at <https://www.ftc.gov/enforcement/competition-matters/2025/02/new-hsr-thresholds-filing-fees-2025>.

⁵ § 19.390.010.

⁶ S.B. 5122.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

have introduced similar bills. Colorado¹⁶ and Nevada¹⁷ have bills that have passed in one chamber. In Utah, a bill passed in the House but failed a vote in the Senate.¹⁸ California,¹⁹ Hawaii,²⁰ West Virginia,²¹ and Washington, DC²² have also all introduced premerger notification bills. More states may join them in the near future.

VI. Conclusion

State-specific premerger notification laws may signal more active merger enforcement by states. For now, merging parties should check whether they meet the threshold conditions of the Washington State law and ensure they submit a copy of their HSR filings if they do. Merging parties should also continue to monitor developments in other states that may soon implement their own premerger notification regime.

...

CLEARY GOTTLIB

¹⁶ Colorado General Assembly, SB25-126 Uniform Antitrust Pre-Merger Notification Act, available at <http://leg.colorado.gov/bills/sb25-126>.

¹⁷ Nevada Legislature, SB218, available at <https://www.leg.state.nv.us/App/NELIS/REL/83rd2025/Bill/12306/Overview>.

¹⁸ Utah State Legislature, H.B. 466 Uniform Antitrust Pre-Merger Notification Act Amendments, available at <https://le.utah.gov/~2025/bills/static/HB0466.html>.

¹⁹ California Legislative Information, SB-25 Antitrust: premerger notification, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB25.

²⁰ Hawaii State Legislature, SB348, available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=348&year=2025.

²¹ West Virginia Legislature, Senate Bill 32, available at http://www.wvlegislature.gov/bill_status/bills_history.cfm?input=32&year=2025&sessiontype=rs&btype=bill and House Bill 2110, available at http://www.wvlegislature.gov/bill_status/Bills_history.cfm?input=2110&year=2025&sessiontype=RS&btype=bill.

²² Council of the District of Columbia, B26-0030 - Uniform Antitrust Pre-Merger Notification Act of 2025, available at <https://lims.dccouncil.gov/Legislation/B26-0030>.