Washington Becomes First State to Enact a General Pre-Merger Notification Regime

April 15, 2025

On April 4, 2025, Washington became the first state to enact the Uniform Antitrust Pre-Merger Notification Act (available here). Unlike other state premerger notification processes, which historically have been limited to healthcare transactions,[1] this law is not industry specific.

While the federal Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act") has required merging parties to notify the federal antitrust agencies of transactions exceeding a certain value since 1976, the U.S. states historically have not required such notice, except in limited circumstances. In line with the increased role that many U.S. states wish to take in antitrust enforcement, this distinction has begun to dissolve.

Effective July 27, 2025, the Washington law will require parties that have the requisite nexus to Washington State to contemporaneously electronically submit their HSR filing and its attachments to the Office of the Washington Attorney General (the "WA OAG"). Specifically, it applies to parties that make HSR filings that: (a) have their principal place of business in Washington; (b) have annual net sales in Washington of the goods or services involved in the transaction of at least $25.28 million (i.e., 20% of the current $126.4 million HSR Act threshold); or (c) are a healthcare provider or organization, as defined under state law, conducting business in Washington. If only one party to a transaction meets those requirements, only that party needs to submit its HSR filing to the WA OAG.

The Washington law requires notice only—unlike the HSR Act, it neither requires payment of a filing fee nor imposes a waiting period on the transaction before the parties can close. And the WA OAG did not gain any additional enforcement powers with the passage of this legislation. The apparent benefit to the WA OAG is that it obviates the need to obtain a waiver from the party with the requisite nexus to the state to gain access to the HSR filing from the federal enforcer.

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[1] The 15 following states have healthcare industry merger control regimes: California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New York, New Mexico, Oregon, Rhode Island, Vermont and Washington.

The Washington law contains a provision expressly exempting the submission from Washington's public records act and forbidding the WA OAG from publicly disclosing the HSR form or even the fact that a filing has been made, other than pursuant to a protective order. The WA OAG may, however, share information with the Federal Trade Commission, the Antitrust Division of the U.S. Department of Justice or another state's attorney general if that state has also enacted the uniform act.

As a result of this law, parties making HSR filings now will need to obtain Washington-State level sales revenue data to determine whether a filing is required. Failure to make a required filing may result in a civil penalty of up to $10,000 per day of noncompliance.

Although Washington is the first state to enact the Uniform Antitrust Pre-Merger Notification Act, it is not likely to be the last. Since the uniform act was adopted by the Uniform Law Commission last summer, it has been introduced in California, Colorado, the District of Columbia, Nevada, Utah and West Virginia. To the extent that additional states pass their own versions of the uniform act, a state-by-state jurisdictional analysis may become a required component of the HSR filing process.

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We will continue to monitor Washington State antitrust law, as well as the introductions and enactments of the Uniform Antitrust Pre-Merger Notification Act in other states. Please do not hesitate to contact us with any questions.

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