
Hughes Hubbard & Reed

Washington State Enacts First-of-Its-Kind Antitrust Pre-Merger Notification Law

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May 1, 2025 - In a significant development for antitrust regulation in the United States, Washington state has become the first state to enact a mandatory pre-merger notification regime that mirrors aspects of the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). Gov. Bob Ferguson recently signed into law the Uniform Antitrust Pre-Merger Notification Act (APNA). While several states (besides Washington) already have healthcare-focused merger review laws in place, the new Washington state law is the first comprehensive state merger notification law. The new law will require certain mergers and acquisitions involving entities with a nexus to Washington to be reported to the state's attorney general before they are consummated. **The law's filing requirements will apply to any transaction for which an HSR filing is made on or after the law's effective date of July 27, 2025.**

Key Provisions of APNA

- **Filing requirement:** Similar to the HSR Act, APNA mandates that parties to certain transactions meeting specific thresholds must notify the Washington State Attorney General's Office (AGO).
- **Jurisdictional nexus:** APNA applies to transactions where either the acquiring or acquired party meets any of the following criteria:
 - Has its principal place of business in Washington state
 - Has annual net sales in Washington state of the goods or services involved in the transaction that are at least 20% of the HSR filing threshold; currently, the HSR threshold is \$126.4 million and the Washington state threshold is \$25.28 million
 - Is a health care provider or organization conducting business in Washington state
- **Notification thresholds:** The state notification requirements are triggered only when the transaction is reportable under the HSR Act (generally, transactions valued above \$126.4 million, as adjusted annually).
- **Information required:**
 - If a party's principal place of business is in Washington state, a complete copy of that party's HSR notification and accompanying documents (e.g., transaction-related documents and strategic plans) must be submitted.
 - For other transactions meeting the nexus requirements, only the HSR form itself is initially required, with accompanying documents to be supplied upon request.
- **No filing fee:** Unlike HSR filings, there is no filing fee under APNA.
- **No additional waiting period:** Unlike the HSR Act, APNA does not impose a mandatory waiting period. The APNA filing must be made contemporaneously with the HSR filing, which in effect gives Washington state 30 days to

review the transaction prior to closing.

- **Confidentiality:** Filings, related materials and even the fact of the filing are confidential and exempt from public disclosure under Washington state's Public Records Act. The Washington State AGO is permitted to share information with the Federal Trade Commission, the U.S. Department of Justice and the attorney general of any state with a similar pre-merger notification law.
- **Enforcement:** Failure to comply with the pre-merger notification requirements can result in civil penalties of up to \$10,000 per day of noncompliance.
- **Filing exemptions:** Currently, APNA does not specify any exemptions beyond those already existing under the HSR Act.

Implications for Businesses

Businesses contemplating mergers, acquisitions and similar transactions that have a connection to Washington state will need to evaluate whether their transactions meet the jurisdictional nexus criteria, particularly the 20% sales threshold, and whether an HSR filing is required. If a company does not have a principal place of business in Washington state, it should track sales revenue attributable to Washington state to determine whether the 20% threshold is met. Businesses should also incorporate the Washington state notification into its transaction timeline, ensure that the notification is made concurrently with the HSR filing and be prepared to respond to inquiries and requests for additional information from the Washington State AGO.

Looking Ahead

Washington state's pioneering legislation could pave the way for other states seeking to enhance their antitrust enforcement capabilities. Businesses should closely monitor developments in this area and be prepared for similar laws in other state jurisdictions. Several other states, including California, Colorado, Hawaii, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Utah and West Virginia, as well as the District of Columbia, have considered but not yet passed similar legislation.

Hughes Hubbard is closely monitoring the implementation of this new law and is prepared to assist clients in understanding their obligations and navigating the pre-merger notification process in Washington state. Please do not hesitate to contact any of the lawyers listed below if you have any questions or require further guidance.

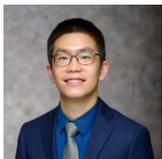
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