Uniform Antitrust Pre-Merger Notification Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES



*WITHOUT PREFATORY NOTE AND Comments*

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National Conference of Commissioners

on Uniform State Laws

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**Uniform Antitrust Pre-Merger Notification Act**

#  Section 1. Title

 This [act] may be cited as the Uniform Antitrust Pre-Merger Notification Act.

#  Section 2. Definitions

 In this [act]:

 (1) “Additional documentary material” means the additional documentary material filed with a Hart-Scott-Rodino form.

 (2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

 (3) “Filing threshold” means the minimum size of a transaction that requires the transaction to be reported under the Hart-Scott-Rodino Act in effect when a person files a pre-merger notification.

 (4) “Hart-Scott-Rodino Act” means Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. Section 18a[, as amended].

 (5) “Hart-Scott-Rodino form” means the form filed with a pre-merger notification, excluding additional documentary material.

 (6) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

 (7) “Pre-merger notification” means a notification filed under the Hart-Scott-Rodino Act with the Federal Trade Commission or the United States Department of Justice Antitrust Division, or a successor agency.

 (8) “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.

***Legislative Note:*** *It is the intent of this act to incorporate future amendments to the cited federal law in paragraph (4). A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

#  Section 3. Filing Requirement

 (a) A person filing a pre-merger notification shall file contemporaneously a complete electronic copy of the Hart-Scott-Rodino form with the Attorney General if:

 (1) the person has its principal place of business in this state; 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.

 (b) A person that files a form under subsection (a)(1) shall include with the filing a complete electronic copy of the additional documentary material.

 (c) On request of the Attorney General, a person that filed a form under subsection (a)(2) shall provide a complete electronic copy of the additional documentary material to the Attorney General not later than [seven] days after receipt of the request.

 (d) The Attorney General may not charge a fee connected with filing or providing the form or additional documentary material under this section.

#  Section 4. Confidentiality

 (a) Except as provided in subsection (c) or Section 5, the Attorney General may not make public or disclose:

 (1) a Hart-Scott-Rodino form filed under Section 3;

 (2) the additional documentary material filed or provided under Section 3;

 (3) a Hart-Scott-Rodino form or additional documentary material provided by the attorney general of another state;

 (4) that the form or the additional documentary material were filed or provided under Section 3, or provided by the attorney general of another state; or

 (5) the merger proposed in the form.

 (b) A form, additional documentary material, and other information listed in subsection (a) are exempt from disclosure under [cite to state’s freedom of information act].

 (c) Subject to a protective order entered by an agency, court, or judicial officer, the Attorney General may disclose a form, additional documentary material, or other information listed in subsection (a) in an administrative proceeding or judicial action if the proposed merger is relevant to the proceeding or action.

 (d) This [act] does not:

(1) limit any other confidentiality or information-security obligation of the Attorney General;

(2) preclude the Attorney General from sharing information with the Federal Trade Commission or the United States Department of Justice Antitrust Division, or a successor agency; or

(3) preclude the Attorney General from sharing information with the attorney general of another state that has enacted the Uniform Antitrust Pre-Merger Notification Act or a substantively equivalent act. The other state’s act must include confidentiality provisions at least as protective as the confidentiality provisions of the Uniform Antitrust Pre-Merger Notification Act.

***Legislative Note:*** *A state may need to amend its freedom of information act to conform to this act.*

#  Section 5. Reciprocity

 (a) The Attorney General may disclose a Hart-Scott-Rodino form and additional documentary material filed or provided under Section 3 to the attorney general of another state that enacts the Uniform Antitrust Pre-Merger Notification Act or a substantively equivalent act. The other state’s act must include confidentiality provisions at least as protective as the confidentiality provisions of the Uniform Antitrust Pre-Merger Notification Act.

 (b) At least two business days before making a disclosure under subsection (a), the Attorney General shall give notice of the disclosure to the person filing or providing the form or additional documentary material under Section 3.

#  Section 6. Civil Penalty

 The Attorney General may [impose][seek imposition of] a civil penalty of not more than $[10,000] per day of noncompliance on a person that fails to comply with Section 3(a), (b), or (c). A civil penalty imposed under this section is subject to procedural requirements applicable to the Attorney General, including the requirements of due process.

**Legislative Note*:***A state should determine whether to use “impose” or “seek imposition of” based on whether that state’s laws permit its attorney general to impose a civil penalty directly or require the attorney general to seek imposition of a civil penalty in an appropriate proceeding.

#  Section 7. Uniformity of Application and Construction

 In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

#  Section 8. Transitional Provision

 This [act] applies only to a pre-merger notification filed on or after [the effective date of this [act]].

#  Section 9. Effective Date

 This [act] takes effect …