

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2110

By Delegates W. Clark and Hall

[Introduced February 12, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §47-18A-1; §47-18A-2; §47-18A-3; §47-18A-4; §47-18A-5; §47-18A-6; §47-
3 18A-7; and §47-18A-8; relating to establishing the Uniform Antitrust Pre-Merger
4 Notification Act; providing an article citation designation; defining terms; requiring pre-
5 notification of a merger of certain businesses to the attorney general; requiring the
6 attorney general to keep confidential certain documents and providing exceptions thereto;
7 allowing reciprocity between the attorney general and certain other state attorneys general
8 for sharing of confidential documents; authorizing the attorney general to pursue civil
9 penalties for any person who fails to comply with the provisions of this act; requesting
10 courts to promote uniformity between states when applying and construing this act; and
11 providing that the provisions of this act apply only to those mergers filed on or after the
12 effective date of the act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 18A. UNIFORM ANTITRUST PRE-MERGER NOTIFICATION ACT.

§47-18A-1. Title.

1 This article may be cited as the Uniform Antitrust Pre-Merger Notification Act.

§47-18A-2. Definitions.

1 In this article:

2 (a) "Additional documentary material" means the additional documentary material filed
3 with a Hart-Scott-Rodino form.

4 (b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
5 optical, electromagnetic, or similar capabilities.

6 (c) "Filing threshold" means the minimum size of a transaction that requires the transaction
7 to be reported under the Hart-Scott-Rodino Act.

(d) "Hart-Scott-Rodino Act" means Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a.

(e) "Hart-Scott-Rodino form" means the form filed with a pre-merger 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) "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.

(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.

§47-18A-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% of the filing threshold.

(b) A person that files a form under §47-18A-3(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 47-18A-3(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.

§47-18A-4. Confidentiality.

1 (a) Except as provided in §47-18A-4(c) or §47-18A-5, the Attorney General may not make
2 public or disclose:

3 (1) A Hart-Scott-Rodino form filed under §47-18A-3;

4 (2) The additional documentary material filed or provided under §47-18A-3;

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

7 (4) That the form or the additional documentary material were filed or provided under §47-
8 18A-3, or provided by the attorney general of another state; or

9 (5) The merger proposed in the form.

10 (b) A form, additional documentary material, and other information listed in subsection (a)
11 are exempt from disclosure under §29B-1-1 *et seq.*

12 (c) Subject to a protective order entered by an agency, court, or judicial officer, the Attorney
13 General may disclose a form, additional documentary material, or other information listed in §47-
14 18A-4(a) in an administrative proceeding or judicial action if the proposed merger is relevant to the
15 proceeding or action.

16 (d) This article does not:

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

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

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

§47-18A-5. Reciprocity.

1 (a) The Attorney General may disclose a Hart-Scott-Rodino form and additional

documentary material filed or provided under §47-18A-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 §47-18A-5(a), the Attorney General shall give notice of the disclosure to the person filing or providing the form or additional documentary material under §47-18A-3.

§47-18A-6. Civil Penalty.

The Attorney General may seek imposition of a civil penalty of not more than \$10,000 per day of noncompliance on a person that fails to comply with §47-18A-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.

§47-18A-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.

§47-18A-8. Transitional Provision.

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

NOTE: The purpose of this bill is to enact the Uniform Antitrust Pre-Merger Notification Act; which allows the state attorney general to receive access to filings with the federal government of required business mergers that may have antitrust implications that can impact the state, so the state can participate in the antitrust review process while assuring that the attorney general preserves the confidentiality of shared documents.

This bill was recommended for passage by the Commission on Interstate Cooperation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.