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## Civil Rights & Judiciary Committee

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### HB 2172

**Brief Description:** Protecting whistleblowers who provide information to the attorney general regarding anticompetitive transactions involving hospitals, hospital systems, or provider organizations.

**Sponsors:** Representatives Caldier and Jinkins.

#### Brief Summary of Bill

- Expands healthcare whistleblower protections to a whistleblower who reports or provides information to the Attorney General regarding an alleged antitrust violation in connection with a merger, acquisition, or contracting affiliation involving a hospital, hospital system, or provider organization.

**Hearing Date:** 2/4/20

**Staff:** Ingrid Lewis (786-7289).

#### **Background:**

##### Antitrust Laws.

##### *Washington's Consumer Protection Act.*

Under the state's Consumer Protection Act (CPA), various anticompetitive business practices are declared unlawful. Business practices prohibited by the CPA include:

- engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce, including contracts, trusts, or conspiracies in restraint of trade;
- monopolizing or attempting to monopolize trade;
- entering into agreements not to purchase from the competitors of a particular seller when the agreement substantially lessens competition or tends to create a monopoly; and
- acquiring corporate stock when the acquisition substantially lessens competition or tends to create a monopoly.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Antitrust Division of the Office of the Attorney General investigates and prosecutes violations of the CPA and also has authority to investigate and prosecute federal antitrust law violations. The Attorney General may bring an action in the name of the state on behalf of persons injured by CPA violations. In addition, a private party may bring an action to enforce the CPA.

*The Hart-Scott-Rodino Antitrust Improvements Act.*

The federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires companies intending to engage in certain mergers or acquisitions to provide premerger notification and file certain information with the United States Federal Trade Commission and the Department of Justice before consummating these transactions. The reporting requirement applies to proposed transactions that satisfy certain size and other criteria, and each party to a transaction that meets the criteria must file notifications and wait a specified period of time, typically 30 days, before consummating the transaction. The waiting period enables the enforcement agencies to review whether the effect of the transaction will substantially lessen competition.

*The Washington Health Care Marketplace.*

Washington statutes require hospitals, hospital systems, and provider organizations to provide prior written notice to the Attorney General for certain transactions that result in a material change, which include mergers, acquisitions, or contracting affiliations between two or more of the following types of entities: hospitals; hospital systems; or provider organizations. In addition, any provider or provider organization conducting business in Washington that files a premerger notification with the Federal Trade Commission and the Department of Justice in compliance with the federal Hart-Scott-Rodino Antitrust Improvements Act is required to provide written notification to the Attorney General of the filing.

Healthcare Whistleblowers.

Whistleblower protections, which include confidentiality and freedom from workplace reprisals, extend to consumers, employees, and health care professionals, including certain health care providers or member of a medical staff at a health care facility, who communicate allegations of improper quality of care by a health care facility or provider or who initiate any investigation or administrative proceeding about a complaint made to the Department of Health in good faith.

An employee of a health care provider or a health care facility who is a whistleblower has a cause of action under the Law Against Discrimination if he or she experiences a workplace reprisal or retaliatory action.

A nonemployee whistleblower who is subjected to reprisal or retaliatory action by a health care provider or health care facility may file a civil cause of action within two years of the retaliatory action. The nonemployee may recover damages and reasonable attorney's fees and costs, as well as enjoin further violations.

**Summary of Bill:**

A hospital, hospital system, or provider organization is prohibited from retaliatory action against a whistleblower who reports or provides information to the Attorney General regarding an alleged antitrust violation in connection with a merger, acquisition, or contracting affiliation involving the hospital, hospital system, or provider organization. A whistleblower who is

subjected to reprisal or retaliatory action is entitled to remedies under the health care whistleblower statute.

A hospital, hospital system, or provider organization is liable for all costs incurred by a whistleblower in responding to any discovery request made in an action brought by the Attorney General against the hospital, hospital system, or provider organization for an antitrust violation in connection with a merger, acquisition, or contracting affiliation, to include all costs and reasonable attorney's fees incurred in preparing for and attending a deposition or responding to document production.

"Whistleblower" is defined as a consumer, employee, or health care professional who in good faith reports or provides information to the Attorney General regarding alleged antitrust violations resulting from a merger, acquisition, or contracting affiliation involving a hospital, hospital system, or provider organization.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.