

## ACT 205

S. B. NO. 564

A Bill for an Act Relating to the State Antitrust Laws and Providing an Exemption for Certain Combinations and Arrangements Necessary for the Survival of Failing Newspapers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 480, Hawaii Revised Statutes, is amended by adding a new part to be appropriately numbered and to read as follows:

**“PART II. ANTITRUST EXEMPTION**

**Sec. 480- Statement of findings and policy.** The legislature finds that:

- (1) There has been an alarming decline in the number of American newspapers to the point where there are fewer than sixty cities with competing dailies as against five hundred fifty-two cities a half-century ago;
- (2) Twenty-two cities have been able to maintain newspaper competition only by virtue of joint operating plans in which a newspaper in dire financial straits merges with its stronger competition, its commercial components (mechanical, advertising, circulation) but withholding its editorial functions;
- (3) The alternative in such cases is to enter into a full merger, with the result of a single ownership of morning and evening papers and of a single editorial policy;
- (4) The joint-plan operation of The Honolulu Advertiser and the Honolulu Star-Bulletin, separately owned and with independent editorial policies and staffs, has given the community that diversity of opinion and commentary which is essential to public awareness and understanding of vital issues; and

- (5) There has been enacted by the Congress of the United States as an amendment to the federal antitrust laws an act for newspaper preservation providing that a failing newspaper merging its non-editorial functions with its competitor will be permitted under the federal law (Public Law 91-353, 84 Stat. 466).

The legislature declares that it is the public policy of the United States applicable in all parts of the United States, 'to preserve the publication of newspapers in any city, community, or metropolitan area where a joint arrangement has been heretofore entered into because of economic distress or is hereafter effected' in accordance with the provisions of the above referred to Public Law 91-353, 84 Stat. 466, and the public policy of this State is hereby declared to be in conformity with the public policy of the United States.

**Sec. 480- Definitions.** As used in this part, unless the context otherwise requires:

- (1) 'Antitrust law' means chapter 480 and 481 (part 1) and any other laws in *pari materia*;
- (2) 'Joint newspaper operating arrangement' means any contract, agreement, joint venture, whether or not incorporated, or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution; provided that there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies are independently determined;
- (3) 'Newspaper Owner' means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications;
- (4) 'Newspaper publication' means a publication produced on newsprint paper which is published in one or more issues weekly, including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area, and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion;
- (5) 'Failing newspaper' means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure;
- (6) 'Person' or 'persons' includes individuals, corporations, firms, trusts, partnerships, and incorporated or unincorporated associations, existing under or authorized by the laws of this State or any other state, or any foreign country.

**Sec. 480 Preservation of newspapers; exemption from antitrust laws.**

Any failing newspaper operation may merge in a joint newspaper operation provided that there shall not be a merger, combination, or amalgamation of the editorial or reportorial staffs. The editorial policies of both newspapers of the joint newspaper operation shall be independently determined.

**Sec. 480 Lawful and unlawful practices.** (a) It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operation arrangement entered into prior to the effective date of this part, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication. Provided that the terms of a renewal or amendment to a joint operating arrangement must be filed with the department of the attorney general, the amendment shall not add a newspaper publication or newspaper publications to such arrangement.

(b) It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the attorney general. Prior to granting approval, the attorney general shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of the arrangement would effectuate the policy and purpose of this part.

**Sec. 480- No exemption of antitrust laws granted; when.** Nothing contained in this part shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this part, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

**Sec. 480- Violation a misdemeanor.** Any person who violates section 480- (b), including any newspaper owner, failing newspaper, or joint newspaper operating arrangement shall be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding one year, or both.

**Sec. 480- Severability.** If any provision of this part or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provisions or applications, and to this end the provisions of this part are severable."

**SECTION 2.** This Act shall take effect upon its approval.

Became law June 20, 1972, without Governor's signature pursuant to Art, III, Section 17, of the Hawaii State Constitution.