

ACT 108

S.B. NO. 702

A Bill for an Act Relating to Antitrust.

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

SECTION 1. Section 480-1, Hawaii Revised Statutes, is amended by amending the definition of “person” or “persons” to read as follows:

““Person” or “persons” includes individuals, corporations, firms, trusts, partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, and incorporated or unincorporated associations, existing under or authorized by the laws of this State, or any other state, or any foreign country.”

SECTION 2. Section 480-7, Hawaii Revised Statutes, is amended to read as follows:

“§480-7 Mergers, acquisitions, holdings, and divestitures. (a) No [corporation] person shall acquire and hold, directly or indirectly, ~~[from and after August 21, 1961,]~~ the whole or any part of the stock ~~[or other share capital],~~ interest, or membership of any other ~~[corporation,]~~ person, or the whole or any part of the assets of any other ~~[corporation]~~ person, where the effect of ~~[such]~~ the acquisition and holding may be substantially to lessen competition, or to tend to create a monopoly in any line of commerce in any section of the State; provided that this subsection shall not apply to ~~[corporations purchasing such]~~ any person acquiring and holding the stock, interest, or membership solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition~~[.]~~ or the creation of a monopoly in any line of commerce in any section of the State. Nor shall anything in this subsection prevent a ~~[corporation]~~ person from causing the formation of a subsidiary ~~[corporations]~~ business entity for the actual carrying on of ~~[their]~~ its immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock, interest, or membership of ~~[the]~~ a subsidiary ~~[corporation,]~~ business entity, when the effect of the formation is not substantially to lessen competition.

~~[(b) No corporation shall hold, directly or indirectly, the whole or any part of the stock or other share capital of any other corporation, or the whole or any part of the assets of any other corporation, acquired prior to August 21, 1961, where the effect of such holding is substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the State.]~~

As used in this subsection:

“Control” means:

- (1) Owning or having the power to vote eighty per cent or more of any class of voting securities of the subsidiary;
- (2) Having the power to elect, by any means, a majority of the directors; or
- (3) Having the power to exercise a dominant influence over the management and policies of the subsidiary.

“Subsidiary” means any person that is under the control of a person.

(b) Notwithstanding any other provision in this chapter to the contrary, any person who may or shall be injured in the person’s business or property because of anything prohibited under subsection (a) may bring an action for injunctive relief against the proposed merger or acquisition. In any action brought pursuant to this subsection, the court, as it deems just, may award to a prevailing party and enter as part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney’s fees.

(c) Where the court finds that the holding of [such] the whole or any part of the stock, [share capital,] interest, membership, or assets [is] of any other person may be substantially to lessen competition or [tends] to tend to create a monopoly[.] in any line of commerce in any section of the State,¹ and is therefore not in the public interest, then the court [shall] may order the divestiture or other disposition of [such stocks, share capital,] the stock, interest, membership, or assets[.] of the [corporation,] person, and [shall] prescribe a reasonable time, manner, and degree of the divestiture or other disposition thereof; provided that the court shall not order the divestiture or other disposition of the assets of the [corporation] person unless it is necessary to eliminate the lessening of competition or the tendency to create a monopoly[.] and the assets are reasonably identifiable and separable, and it can be done without causing undue hardship on the economic entity.’’

SECTION 3. Section 480-13, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) Except as provided in subsections (b) and (c), any person who is injured in the person’s business or property by reason of anything forbidden or declared unlawful by this chapter:

- (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable [attorneys] attorney’s fees together with the costs of suit; provided that indirect purchasers injured by an illegal overcharge shall recover only compensatory damages, and reasonable [attorneys] attorney’s fees together with the costs of suit in actions not brought under section 480-14(c); and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable [attorneys] attorney’s fees together with the [eost] costs of suit.

(b) Any consumer who is injured by any unfair or deceptive act or practice forbidden or declared unlawful by section 480-2:

- (1) May sue for damages sustained by the consumer, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable [attorneys²] attorney’s fees together with the costs of suit; provided that where the plaintiff is an elder, the plaintiff, in the alternative, may be awarded a sum not less than \$5,000 or threefold any damages sustained by the plaintiff, whichever sum is the greater, and reasonable [attorneys²] attorney’s fees together with the costs of suit. In determining whether to adopt the \$5,000 alternative amount in an award to an elder, the court shall consider the factors set forth in section 480-13.5; and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable [attorneys²] attorney’s fees together with the [eost] costs of suit.

(c) The remedies provided in subsections (a) and (b) shall be applied in class action and de facto class action lawsuits or proceedings, including actions brought on behalf of direct or indirect purchasers; provided that:

- (1) The minimum \$1,000 recovery provided in subsections (a) and (b) shall not apply in a class action or a de facto class action lawsuit;
- (2) In class actions or de facto class actions where both direct and indirect purchasers are involved, or where more than one class of indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for compensatory damages that the illegal overcharge has been passed on or passed back to others who are themselves entitled to recover so as to avoid the duplication of recovery of compensatory damages;
- (3) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions;
- (4) In no event shall an indirect purchaser be awarded less than the full measure of compensatory damages attributable to the indirect purchaser;
- (5) In any lawsuit or lawsuits in which claims are asserted by both direct purchasers and indirect purchasers, the court is authorized to exercise its discretion in the apportionment of damages, and in the transfer and consolidation of cases to avoid the duplication of the recovery of

- damages and the multiplicity of suits, and in other respects to obtain substantial fairness;
- (6) In any case in which claims are being asserted by a part of the claimants in a court of this State and another part of the claimants in a court other than of this State, where the claims arise out of same or overlapping transactions, the court is authorized to take all steps reasonable and necessary to avoid duplication of recovery of damages and multiplicity of suits, and in other respects, to obtain substantial fairness;
 - (7) In instances where indirect purchasers file an action and obtain a judgment or settlement prior to the completion of a direct purchaser's action in courts other than this State, the court shall delay disbursement of the damages until such time as the direct purchaser's suits are resolved to either final judgment, consent decree or settlement, or in the absence of a direct purchaser's lawsuit in the courts other than this State by direct purchasers, the expiration of the statute of limitations, or in such manner that will minimize duplication of damages to the extent reasonable and practicable, avoid multiplicity of suit, and obtain substantial fairness; and
 - (8) In the event damages in a class action or de facto class action remain unclaimed by the direct or indirect purchasers, the class representative or the attorney general shall apply to the court and such funds shall escheat to the State upon showing that reasonable efforts made by the State to distribute the funds have been unsuccessful."

SECTION 4. Statutory material to be repealed is bracketed and ~~stricken~~.
New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2005.)

Note

1. Comma should be underscored.