

MICHIGAN ANTITRUST REFORM ACT

Act 274 of 1984

AN ACT to prohibit contracts, combinations, and conspiracies in restraint of trade or commerce; to allow certain agreements not to compete; to prohibit monopolies and attempts to monopolize trade or commerce; to prescribe powers and duties of certain state officers and agencies; to provide remedies, fines, and penalties for violations of this act; to bar certain causes of action; and to repeal certain acts and parts of acts.

History: 1984, Act 274, Eff. Mar. 29, 1985 ;-- Am. 1987, Act 243, Imd. Eff. Dec. 28, 1987

The People of the State of Michigan enact:

445.771 Definitions.

Sec. 1.

As used in this act:

- (a) "Person" means an individual, corporation, business trust, partnership, association, or any other legal entity.
- (b) "Relevant market" means the geographical area of actual or potential competition in a line of trade or commerce, all or any part of which is within this state.
- (c) "Trade or commerce" means the conduct of a business for profit or not for profit producing or providing goods, commodities, property, or services and includes, without limitation, advertising, franchising, solicitation, offering for sale, lease, or distribution of a service or property, tangible or intangible, real, personal or mixed, or any other article of commerce.
- (d) "Unit of government" means this state or an agency, instrumentality, political subdivision, or public corporation of this state, including but not limited to municipal corporations, quasi-municipal corporations, and authorities, and including their officials, employees, and agents when acting in their official capacity.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.772 Unlawful contract, combination, or conspiracy.

Sec. 2.

A contract, combination, or conspiracy between 2 or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.773 Unlawful monopoly.

Sec. 3.

The establishment, maintenance, or use of a monopoly, or any attempt to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding or limiting competition or controlling, fixing, or maintaining prices, is unlawful.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.774 Labor as commodity or article of commerce; organizations for mutual help; acts or conduct of governmental unit; authorized transactions or conduct; unlawful transactions or conduct subject to regulatory scheme; transactions or conduct reducing cost of health care; enforcement of federal antitrust act.

Sec. 4.

(1) Labor of a human being is not a commodity or an article of commerce.

(2) This act shall not be construed to forbid the existence and operation of any labor, agricultural, or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects.

(3) This act shall not be construed to prohibit, invalidate, or make unlawful any act or conduct of any unit of government, when the unit of government is acting in a subject matter area in which it is authorized by law to act, except for purposes of conducting an investigation and the obtaining of appropriate injunctive or other equitable relief, other than civil penalties, pursuant to section 7.

(4) This act shall not apply to a transaction or conduct specifically authorized under the laws of this state or the United States, or specifically authorized under laws, rules, regulations, or orders administered, promulgated, or issued by a regulatory agency, board, or officer acting under statutory authority of this state or the United States.

(5) A transaction or conduct made unlawful by this act shall not be construed to violate this act where it is the subject of a legislatively mandated pervasive regulatory scheme, including but not limited to, the insurance code of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, which confers exclusive jurisdiction on a regulatory board or officer to authorize, prohibit or regulate the transaction or conduct.

(6) This act shall not apply to a transaction or conduct of an authorized health maintenance corporation, health insurer, medical care corporation, or health service corporation or health care corporation when the transaction or conduct is to reduce the cost of health care and is permitted by the commissioner. This subsection shall not affect the enforcement of the federal antitrust act by federal courts or federal agencies.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.774a Agreement or covenant protecting business interests of employer; applicability of section.

Sec. 4a.

(1) An employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.

(2) This section shall apply to covenants and agreements which are entered into after March 29, 1985.

History: Add. 1987, Act 243, Imd. Eff. Dec. 28, 1987

445.775 Venue.

Sec. 5.

An action for violation of this act shall be brought in a circuit court where venue is proper without regard to the amount in controversy.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.776 Written demand by attorney general or prosecuting attorney; contents; noncompliance; action to enforce demand; service of notice and pleadings; orders; confidentiality; waiver.

Sec. 6.

(1) If the attorney general or a prosecuting attorney has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may serve upon the person, before bringing any action in the circuit court, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand shall include all of the following:

- (a) Be served upon the person in the manner required for service of process in this state.
- (b) Describe the nature of the conduct constituting the violation under investigation.
- (c) Describe the document or object with sufficient definiteness to permit it to be fairly identified.
- (d) If demanded, contain a copy of the written interrogatories.
- (e) Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or prosecuting attorney, with the permission of, or at the request of, the attorney general, on or before that time.
- (f) Specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document or object.
- (g) Contain a copy of subsection (2).

(2) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (1), the attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may file in the circuit court of the county in which the person resides or in which the person maintains a principal place of business within this state an action to enforce the demand. Notice of hearing the action and a copy of all pleadings shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been or is presently occurring a violation of this act, and that the information sought or document or object demanded is relevant to the investigation, the court shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(3) Any procedure, testimony taken, or material produced shall be kept confidential by the attorney general or a prosecuting attorney before bringing an action against a person under this act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.777 Action by attorney general or prosecuting attorney for injunctive or other equitable relief and civil penalties; assessment of penalty.

Sec. 7.

The attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may bring an action for appropriate injunctive or other equitable relief and civil penalties in the name of the state for a violation of this act. The court may assess for benefit of the state a civil penalty of not more than \$50,000. 00 for each violation of this act.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.778 Action by state, political subdivision, public agency, or other person for injunctive or other equitable relief, actual damages, interest, costs and attorney's fees; effect of flagrant violation.

Sec. 8.

(1) The state, a political subdivision, or any public agency threatened with injury or injured directly or indirectly in its business or property by a violation of this act may bring an action for appropriate injunctive or other equitable relief, actual damages sustained by reason of a violation of this act, and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees.

(2) Any other person threatened with injury or injured directly or indirectly in his or her business or property by a violation of this act may bring an action for appropriate injunctive or other equitable relief against immediate irreparable harm, actual damages sustained by reason of a violation of this act, and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of 3 times the actual damages sustained by reason of a violation of this act.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.779 Violation as misdemeanor; penalty; criminal prosecution.

Sec. 9.

A person who engages in any violation of section 2 or 3 with the intent to accomplish a result prohibited by this act shall be guilty of a misdemeanor, punishable by imprisonment of not more than 2 years or a fine of not more than \$10,000.00, or both, if an individual, or not more than \$1,000,000.00 if a person other than an individual. A criminal prosecution shall not be brought under this section if a prior criminal prosecution has been initiated under the Sherman act arising out of the same transactions or occurrences.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.780 Final judgment or decree as prima facie evidence; application of collateral estoppel or issue preclusion.

Sec. 10.

A final judgment or decree determining that a person has violated this act in an action brought by the state under section 7, 8(1), or 9 other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against the person in any other action against the person under section 8 as to all matters with respect to which the judgment or decree would be an estoppel between the parties to the action. This section does not affect the application of collateral estoppel or issue preclusion.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.781 Limitations.

Sec. 11.

(1) An action under section 7 or 9 is barred if not commenced within 4 years after the claim of relief or cause of

action accrues.

(2) An action to recover damages under section 8 is barred if not commenced within 4 years after the claim for relief or cause of action accrues, or within 1 year after the conclusion of any timely action brought by the state under section 7, 8(1), or 9 which is based in whole or in part on any matter complained of in the action for damages, whichever is later.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.782 Remedies cumulative.

Sec. 12.

The remedies provided in this act are cumulative.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.783 Order requiring witness to give testimony or other information; immunity.

Sec. 13.

If a witness has been or may be called to testify or provide other information at any proceeding relating to or under this act, the circuit court for the county in which the proceeding is or may be held may issue, upon application of the attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, which asserts that in his or her judgment the testimony or other information may be necessary to the public interest and the witness has or is likely to refuse to testify, an order requiring the witness to give testimony or provide other information which the witness refuses to give or provide on the basis of the privilege against self-incrimination, if the court provides in its order that the witness shall not be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, occurrence, matter, or thing to which the witness testifies or provides other information or evidence, documentary or otherwise, and that the testimony, information, or evidence shall not be used against the witness, in any criminal investigation, proceeding, or trial, except a prosecution for perjury for giving a false statement or for otherwise failing to comply with the order.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.784 Incorporation of provisions similar to uniform state antitrust act; application and construction; interpretations by federal court.

Sec. 14.

(1) To the extent that this act incorporates provisions of or provisions similar to the uniform state antitrust act, this act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states that enact similar provisions.

(2) It is the intent of the legislature that in construing all sections of this act, the courts shall give due deference to interpretations given by the federal courts to comparable antitrust statutes, including, without limitation, the doctrine of per se violations and the rule of reason.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.785 Short title.

Sec. 15.

This act shall be known and may be cited as the "Michigan antitrust reform act".

History: 1984, Act 274, Eff. Mar. 29, 1985

445.786 Severability.

Sec. 16.

If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, such invalidity shall not affect the remaining portions of applications of this act which can be given effect without the invalid portion or application, provided the remaining portions are not determined by the court to be inoperable, and to this end this act is declared to be severable.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.787 Repeal of acts and parts of acts.

Sec. 17.

The following acts and parts of acts are repealed:

- (a) Act No. 255 of the Public Acts of 1899, being sections 445.701 to 445.712 of the Michigan Compiled Laws.
- (b) Act No. 229 of the Public Acts of 1905, being sections 445.731 to 445.736 of the Michigan Compiled Laws.
- (c) Act No. 329 of the Public Acts of 1905, being sections 445.761 to 445.767 of the Michigan Compiled Laws.
- (d) Sections 553 to 555 and 557 to 560 of Act No. 328 of the Public Acts of 1931, being sections 750.553 to 750.555 and 750.557 to 750.560 of the Michigan Compiled Laws.
- (e) Section 2155 of Act No. 236 of the Public Acts of 1961, being section 600.2155 of the Michigan Compiled Laws.
- (f) Act No. 135 of the Public Acts of 1913, being sections 445.791 to 445.798 of the Michigan Compiled Laws.
- (g) Act No. 282 of the Public Acts of 1937, being sections 445.171 to 445.184 of the Michigan Compiled Laws.

History: 1984, Act 274, Eff. Mar. 29, 1985

445.788 Effect of repeals.

Sec. 18.

The repeal of any statute or part thereof contained herein shall not have the effect to release, relinquish or affect any crime, penalty, fine, forfeiture or liability committed or incurred under such repealed statute or part thereof, and such repealed statute or part thereof shall remain in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of any penalty, fine, forfeiture or liability.

History: 1984, Act 274, Eff. Mar. 29, 1985

