



SENATE BILL No. 1097

April 14, 1994, Introduced by Senators WELBORN, WARTNER,
DI NELLO and PRIDNIA and referred to the Committee on
Commerce

A bill to amend sections 2, 4, and 6 of Act No 274 of the
Public Acts of 1984, entitled as amended

"Michigan antitrust reform act "

being sections 445 772, 445 774, and 445 776 of the Michigan
Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2 4 and 6 of Act No 274 of the
2 Public Acts of 1984 being sections 445 772, 445 774, and 445 776
3 of the Michigan Compiled Laws, are amended to read as follows

4 Sec 2 (1) A contract combination or conspiracy between
5 2 or more persons in restraint of, or to monopolize, trade or
6 commerce in a relevant market is unlawful

7 (2) A HEALTH CARE CORPORATION ORGANIZED UNDER THE NONPROFIT
8 HEALTH CARE CORPORATION REFORM ACT, ACT NO 350 OF THE PUBLIC
9 ACTS OF 1980, BEING SECTIONS 550 1101 TO 550 1704 OF THE MICHIGAN

1 COMPILED LAWS, THAT ENGAGES IN A CONTRACT COMBINATION OR
2 CONSPIRACY BETWEEN 2 OR MORE PERSONS THE EFFECT OF WHICH LESSENS
3 COMPETITION AS MEASURED BY A LOSS IN ECONOMIC EFFICIENCY IN A
4 RELEVANT MARKET ENGAGES IN AN UNLAWFUL ACT UNDER SUBSECTION (1)
5 A LOSS IN ECONOMIC EFFICIENCY UNDER THIS SUBSECTION IS ANY ACTION
6 THAT INCREASES THE ECONOMIC COSTS FOR THE RESIDENTS IN THE RELE-
7 VANT MARKET BY MORE THAN IT INCREASES THE ECONOMIC BENEFITS
8 (3) THE COMMISSIONER OF INSURANCE SHALL CONTINUALLY MONITOR
9 A HEALTH CARE CORPORATION TO DETERMINE WHETHER THE CORPORATION IS
10 VIOLATING THIS ACT IF A HEALTH CARE CORPORATION TOGETHER WITH
11 ALL OF ITS AFFILIATES AND SUBSIDIARIES ACCUMULATES MORE THAN A
12 COMBINED 25% SHARE OF THE DIRECT UNDERWRITTEN HEALTH CARE BUSI-
13 NESS IN THIS STATE AND THE ADMINISTRATIVE SERVICES ONLY BUSINESS
14 IN THIS STATE, THE COMMISSIONER SHALL SPECIFICALLY EXAMINE THE
15 CORPORATION TO DETERMINE WHETHER THE CORPORATION IS VIOLATING
16 THIS ACT IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE
17 THAT THERE MAY HAVE BEEN OR IS PRESENTLY OCCURRING A VIOLATION OF
18 THIS ACT, THE COMMISSIONER SHALL REQUEST THE ATTORNEY GENERAL TO
19 INVESTIGATE THE HEALTH CARE CORPORATION AND SHALL REPORT TO THE
20 SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON INSUR-
21 ANCE ISSUES ON THE COMMISSIONER'S FINDINGS ALONG WITH ANY RECOM-
22 MENDATIONS FOR CHANGES NEEDED IN LAW IF THE ATTORNEY GENERAL
23 RECEIVES A REQUEST TO INVESTIGATE BY THE COMMISSIONER, THE ATTOR-
24 NEY GENERAL SHALL INVESTIGATE THE HEALTH CARE CORPORATION TO
25 DETERMINE WHETHER THERE MAY HAVE BEEN OR IS PRESENTLY OCCURRING A
26 VIOLATION OF THIS ACT

1 Sec 4 (1) Labor of a human being is not a commodity or an
2 article of commerce

3 (2) This act ~~shall not be construed to~~ DOES NOT forbid the
4 existence and operation of any labor, agricultural, or horticult-
5 tural organization instituted for the purpose of mutual help,
6 while lawfully carrying out its legitimate objects

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

14 (4) This act ~~shall~~ DOES not apply to a transaction or con-
15 duct specifically authorized under the laws of this state or the
16 United States, or specifically authorized under laws, rules, reg-
17 ulations, or orders administered, promulgated, or issued by a
18 regulatory agency, board, or officer acting under statutory
19 authority of this state or the United States

20 (5) A transaction or conduct made unlawful by this act
21 ~~shall not be construed to~~ DOES NOT violate this act where it is
22 the subject of a legislatively mandated pervasive regulatory
23 scheme, including but not limited to, the insurance code of 1956,
24 ACT NO 218 OF THE PUBLIC ACTS OF 1956, being sections 500 100 to
25 500 8302 of the Michigan Compiled Laws, which confers exclusive
26 jurisdiction on a regulatory board or officer to authorize,
27 prohibit, or regulate the transaction or conduct

1 (6) This act ~~shall~~ DOES not apply to a transaction or
2 conduct of an authorized health maintenance ~~corporation,~~
3 ORGANIZATION OR health insurer ~~, medical care corporation, or~~
4 ~~health service corporation or health care corporation~~ when the
5 transaction or conduct is to reduce the cost of health care and
6 is permitted by the commissioner This subsection ~~shall~~ DOES
7 not affect the enforcement of the federal antitrust act by fed-
8 eral courts or federal agencies

9 (7) THIS ACT DOES NOT APPLY TO A HEALTH CARE CORPORATION
10 ORGANIZED UNDER THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT,
11 ACT NO 350 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS 550 1101
12 TO 550 1704 OF THE MICHIGAN COMPILED LAWS

13 Sec 6 (1) If the attorney general or a prosecuting attor-
14 ney has reasonable cause to believe that a person has information
15 or is in possession, custody, or control of any document or other
16 tangible object relevant to an investigation for violation of
17 this act, the attorney general or a prosecuting attorney, with
18 the permission of, or at the request of, the attorney general,
19 may serve upon the person, before bringing any action in the cir-
20 cuit court, a written demand to appear and be examined under
21 oath, and to produce the document or object for inspection and
22 copying The demand shall BE SERVED UPON THE PERSON IN THE
23 MANNER REQUIRED FOR SERVICE OF PROCESS IN THIS STATE AND SHALL
24 include all of the following

25 ~~-(a) Be served upon the person in the manner required for~~
26 ~~service of process in this state~~

1 (A) ~~—(b)—~~ Describe the nature of the conduct constituting
2 the violation under investigation

3 (B) ~~—(c)—~~ Describe the document or object with sufficient
4 definiteness to permit it to be fairly identified

5 (C) ~~—(d)—~~ If demanded, contain a copy of the written
6 interrogatories

7 (D) ~~—(e)—~~ Prescribe a reasonable time at which the person
8 must appear to testify, within which to answer the written inter-
9 rogatories, and within which the document or object must be
10 produced, and advise the person that objections to or reasons for
11 not complying with the demand may be filed with the attorney gen-
12 eral or prosecuting attorney, with the permission of, or at the
13 request of, the attorney general, on or before that time

14 (E) ~~—(f)—~~ Specify a place for the taking of testimony or for
15 production and designate the person who shall be custodian of the
16 document or object

17 (F) ~~—(g)—~~ Contain a copy of subsection (2)

18 (2) If a person objects to or otherwise fails to comply with
19 the written demand served upon him or her under subsection (1),
20 the attorney general or a prosecuting attorney, with the permis-
21 sion of, or at the request of, the attorney general may file in
22 the circuit court of the county in which the person resides or in
23 which the person maintains a principal place of business within
24 this state an action to enforce the demand Notice of hearing
25 the action and a copy of all pleadings shall be served upon the
26 person, who may appear in opposition If the court finds that
27 the demand is proper, that there is reasonable cause to believe

1 that there may have been or is presently occurring a violation of
2 this act, and that the information sought or document or object
3 demanded is relevant to the investigation, the court shall order
4 the person to comply with the demand, subject to modification the
5 court may prescribe Upon motion by the person and for good
6 cause shown, the court may make any further order in the proceed-
7 ings that justice requires to protect the person from unreason-
8 able annoyance, embarrassment, oppression, burden, or expense

9 (3) ~~Any~~ EXCEPT AS PROVIDED IN SUBSECTION (4), ANY proce-
10 dure, testimony taken, or material produced shall be kept confi-
11 dential by the attorney general or a prosecuting attorney before
12 bringing an action against a person under this act for the viola-
13 tion under investigation, unless confidentiality is waived by the
14 person being investigated and the person who has testified,
15 answered interrogatories, or produced material, or disclosure is
16 authorized by the court

17 (4) BECAUSE A HEALTH CARE CORPORATION IS A QUASI-PUBLIC
18 ENTITY CREATED OR ORGANIZED UNDER THE NONPROFIT HEALTH CARE COR-
19 PORATION REFORM ACT, ACT NO 350 OF THE PUBLIC ACTS OF 1980,
20 BEING SECTIONS 550 1101 TO 550 1704 OF THE MICHIGAN COMPILED
21 LAWS, ANY FINDINGS AND RECOMMENDATIONS FOR CHANGES NEEDED IN LAW
22 SUBMITTED TO THE SENATE AND HOUSE OF REPRESENTATIVES STANDING
23 COMMITTEES ON INSURANCE ISSUES BY THE COMMISSIONER OF INSURANCE
24 PURSUANT TO SECTION 2(3) SHALL NOT BE CONSIDERED CONFIDENTIAL