

# SENATE BILL No. 1505

September 16, 2008, Introduced by Senators ANDERSON, SCHAUER, CLARK-COLEMAN, BARCIA, OLSHOVE, SWITALSKI, SCOTT and JACOBS and referred to the Committee on Judiciary.

A bill to amend 1984 PA 274, entitled "Michigan antitrust reform act," by amending the title and sections 6 and 7 (MCL 445.776 and 445.777), the title as amended by 1987 PA 243.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

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 **UNDER THIS ACT AND FEDERAL RESTRAINT OF TRADE STATUTES**; to provide remedies, fines, and penalties for violations of this act; to bar certain causes of action; and to repeal certain

1 acts and parts of acts.

2           Sec. 6. (1) If the attorney general or a prosecuting attorney  
3 has reasonable cause to believe that a person has information or is  
4 in possession, custody, or control of any document or other  
5 tangible object relevant to an investigation for violation of this  
6 act **OR A FEDERAL STATUTE APPLICABLE TO RESTRAINTS OF TRADE THAT**  
7 **AUTHORIZES OR PERMITS STATE ACTION**, the attorney general or a  
8 prosecuting attorney, with the permission of, or at the request of,  
9 the attorney general, may serve ~~upon~~**ON** the person, before bringing  
10 any action in ~~the circuit~~**ANY STATE OR FEDERAL** court, a written  
11 demand to appear and be examined under oath, and to produce the  
12 document or object for inspection and copying. The demand ~~shall~~  
13 ~~include~~**MUST MEET** all of the following:

14           (a) Be served ~~upon~~**ON** the person in the manner required for  
15 service of process in this state.

16           (b) Describe the nature of the conduct constituting the  
17 violation under investigation.

18           (c) Describe the document or object with sufficient  
19 definiteness to permit it to be fairly identified.

20           (d) If demanded, contain a copy of the written  
21 interrogatories.

22           (e) Prescribe a reasonable time at which the person must  
23 appear to testify, within which to answer the written  
24 interrogatories, and within which the document or object must be  
25 produced, and advise the person that objections to or reasons for  
26 not complying with the demand may be filed with the attorney  
27 general or prosecuting attorney, with the permission of, or at the

1 request of, the attorney general, on or before that time.

2 (f) Specify a place for the taking of testimony or for  
3 production and designate the person who shall be custodian of the  
4 document or object.

5 (g) Contain a copy of subsection (2).

6 (2) If a person objects to or otherwise fails to comply with  
7 the written demand served upon him or her under subsection (1), the  
8 attorney general or a prosecuting attorney, with the permission of,  
9 or at the request of, the attorney general, may file **AN ACTION** in  
10 ~~the circuit court of the county in which the person resides or in~~  
11 ~~which the person maintains a principal place of business within~~  
12 ~~this state an action~~ **AN APPROPRIATE STATE OR FEDERAL COURT** to  
13 enforce the demand. ~~Notice of~~ **THE ATTORNEY GENERAL OR PROSECUTING**  
14 **ATTORNEY SHALL SERVE NOTICE OF THE** hearing **OF** the action and a copy  
15 of all pleadings ~~shall be served upon~~ **ON** the person, who may appear  
16 in opposition. If the court finds that the demand is proper, that  
17 there is reasonable cause to believe that there may have been or is  
18 presently occurring a violation of this act **OR THE FEDERAL STATUTE**,  
19 and that the information sought or document or object demanded is  
20 relevant to the investigation, the court shall order the person to  
21 comply with the demand, subject to **ANY** modification **PRESCRIBED BY**  
22 the court. ~~may prescribe.~~ Upon motion by the person and for good  
23 cause shown, the court may make any further order in the  
24 proceedings that justice requires to protect the person from  
25 unreasonable annoyance, embarrassment, oppression, burden, or  
26 expense.

27 (3) ~~Any~~ **THE ATTORNEY GENERAL OR PROSECUTING ATTORNEY SHALL**

1 ~~KEEP~~ procedure, testimony taken, or material produced ~~shall be kept~~  
2 **PURSUANT TO A DEMAND UNDER SUBSECTION (1)** confidential ~~by the~~  
3 ~~attorney general or a prosecuting attorney~~ before bringing an  
4 action against a person under this act **OR THE FEDERAL STATUTE** for  
5 the violation under investigation, unless confidentiality is waived  
6 by the person being investigated and the person who has testified,  
7 answered interrogatories, or produced material ~~—~~ or disclosure is  
8 authorized by the court.

9       Sec. 7. (1) The attorney general or a prosecuting attorney,  
10 with the permission of, or at the request of, the attorney general,  
11 may bring an action for appropriate injunctive or other equitable  
12 relief and civil penalties in the name of the state for a violation  
13 of this act. The court may assess for benefit of the state a civil  
14 penalty of not more than \$50,000. 00 for each violation of this  
15 act.

16       **(2) THE ATTORNEY GENERAL, OR A PROSECUTING ATTORNEY ACTING**  
17 **WITH THE PERMISSION OF OR AT THE REQUEST OF THE ATTORNEY GENERAL,**  
18 **MAY BRING AN ACTION IN THE NAME OF THE STATE FOR APPROPRIATE**  
19 **INJUNCTIVE OR OTHER EQUITABLE RELIEF, CIVIL REMEDIES, OR CRIMINAL**  
20 **PENALTIES FOR A VIOLATION OF ANY FEDERAL STATUTE APPLICABLE TO**  
21 **RESTRAINTS OF TRADE THAT AUTHORIZES OR PERMITS STATE ACTION.**