

MICHIGAN CONSUMER PROTECTION ACT (EXCERPT)
Act 331 of 1976

***** 445.911.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 1, 2021 *****

445.911.amended Action by person for declaratory judgment, injunction, or actual damages; class action by person for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 11. (1) Whether or not a person seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is unlawful under section 3.

(b) Enjoin in accordance with the principles of equity a person who is engaging or is about to engage in a method, act, or practice that is unlawful under section 3.

(2) Except in a class action or as otherwise provided in subsection (3), a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or \$250.00, whichever is greater, together with reasonable attorney fees.

(3) Except in a class action, a person who suffers a loss as a result of a violation of section 3/ may bring an action to recover actual damages or \$5,000.00, whichever is greater, together with reasonable attorney fees. In an action brought under this subsection, the court may, in its discretion, award punitive damages.

(4) A person who suffers loss as a result of a violation of this act may bring a class action on behalf of persons residing or injured in this state for the actual damages caused by any of the following:

(a) A method, act, or practice in trade or commerce defined as unlawful under section 3.

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3(1) by a final judgment of the circuit court or an appellate court of this state that is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

(c) A method, act, or practice in trade or commerce declared by a circuit court of appeals or the United States Supreme Court to be an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 USC 45(a)(1), in a decision that affirms or directs the affirmance of a cease and desist order issued by the Federal Trade Commission if the order is final within the meaning of section 5(g) of the federal trade commission act, 15 USC 45(g), and that is officially reported not less than 30 days before the method, act, or practice on which the action is based occurs. For purposes of this subdivision, a method, act, or practice is not unfair or deceptive within the meaning of section 5(a)(1) of the federal trade commission act, 15 USC 45(a)(1), solely because the method, act, or practice is made unlawful by another federal statute that refers to or incorporates section 5(a)(1) of the federal trade commission act, 15 USC 45(a)(1).

(5) On motion of a person and without bond in an action brought under subsection (4), the court may make an appropriate order to do 1 or more of the following:

(a) Reimburse persons who have suffered damages.

(b) Carry out a transaction in accordance with the aggrieved persons' reasonable expectations.

(c) Strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result.

(d) Grant other appropriate relief.

(6) In an action brought under subsection (4), the court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of the defendant's assets to the detriment of members of the class.

(7) If at any stage of proceedings brought under subsection (4) the court requires that notice be sent to the class, a person may petition the court to require the defendant to bear the cost of notice. In determining whether to impose the cost on the defendant or the plaintiff, the court shall consider the probability that the person will succeed on the merits of the person's action.

(8) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery is limited to actual damages.

(9) An action under this section must not be brought more than 6 years after the occurrence of the method, act, or practice that is the subject of the action or more than 1 year after the last payment in a transaction involving the method, act, or practice that is the subject of the action, whichever period of time ends at a later date. However, if a person commences an action against another person, the defendant may assert, as a defense or counterclaim, any claim under this act arising out of the transaction on which the action is brought.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 2020, Act 296, Eff. April 1, 2021.