

Michigan Consumer Protection Act 101

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Michigan Consumer Protection Act (MCL 445.901, *et seq.*)

BACKGROUND

- Backbone of consumer protection in Michigan
- Designed to address common law shortcomings and enforcement challenges
- Recently revived! *AG v. Eli Lilly*



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BASICS

- Prohibits certain statutorily defined unfair, unconscionable, or deceptive methods, acts, or practices (MCL 445.903(1))
- Enforcement:
 - Private
 - Individual
 - Class action
 - AG or County Prosecutors

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WHO'S COVERED?

- Individuals and entities engaged in “trade or commerce”
 - “Trade or commerce” = conduct of a business providing good, property, or service primarily for personal, family, or household purposes. MCL 445.902(1)(g)
 - Specificial includes “the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.” MCL 445.902(1)(g)
- Not covered:
 - Isolated sales by individual
 - Goods or services purchased for business use

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WHO CAN BRING ACTIONS?

- “Persons” = individual corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity. MCL 445.902(1)(d).
- If claiming damages, must show “loss,” MCL 445.911(4):
 - Actual damages (including emotional distress), or
 - Non-monetary “unfulfilled expectations,” measured by the difference between the actual value of the property when the contract was made and the value it would have had if the representations had been true. *Mayhall v. AH Pond Co. Inc*, 129 Mich. App. 178 (1983)



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WHAT CONSTITUTES A VIOLATION?

- Specific unfair, unconscionable, or deceptive methods, acts, or practices defined in MCL 445.903(1)(a)-(ll).
- Examples:
 - (n) “causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.”
 - (2) “failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.”
- **Read the statute and cite the specific subsection(s) in your complaint!**



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WHAT RELIEF IS AVAILABLE?

- Declaratory judgments, MCL 445.911(1)(a)
- Injunctive relief, MCL 445.911(1)(b)
- Damages of \$250 or actual damages, whichever is greater, MCL 445.911(2)
- Reasonable attorney fees, MCL 445.911(3)
 - Not based on amount in controversy, *Jordan v Transnational Motors, Inc.*, 212 Mich App 94 (1995)



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WHAT IS THE STATUTE OF LIMITATIONS?

- 6 years after the occurrence of the method, act, or practice, or
- 1 year after the last payment in a transaction involving the method, act, or practice, whichever is later. MCL 445.911(7).
- Plus defensively: “[W]hen 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 was brought.” MCL 445.911(7).

MCPA Resources

- National Consumer Law Center, [Unfair and Deceptive Acts and Practices](#)
- Nakisha N. Chaney, Bringing a Claim Under the Michigan Consumer Protection Act, ICLE
- Dani K. Liblang and Gary M. Victor, Michigan Causes of Action Formbook, Chapter 12: Consumer Protection Actions, ICLE

Reach out!

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