

# LEGISLATIVE SNAPSHOT

## MICHIGAN CONSUMER PROTECTION ACT

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### Summary

The Michigan Consumer Protection Act (MCPA) was enacted to protect consumers from deceptive business practices such as price gouging or misrepresenting goods as new when they are used. Section 3 of the act states that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and currently lists 37 activities that constitute such a method, act, or practice. In addition, the MCPA specifically prohibits certain acts (for which a civil fine may be imposed) and imposes additional requirements on certain transactions, such as vehicle rental transactions. However, the Michigan Supreme Court has ruled that the act does not apply to individuals or businesses that are regulated under state or federal law.

The MCPA is enforced and administered by the Consumer Protection Division of the Department of the Attorney General. Prosecuting attorneys also may conduct investigations and bring actions under the MCPA in the same manner as the attorney general.

### Exemptions

The MCPA does not apply to any of the following:

- Transactions or conduct specifically authorized under laws administered by a regulatory board or officer acting under state or federal law. (Remedies prescribed by a relevant regulatory act, e.g., the Occupational Code, apply instead of the MCPA. See “Supreme Court Decisions,” below.)
- Actions by members of the media in publishing or distributing advertisements, unless the media member knew the false character of the advertisement or had a direct financial interest in the product or service advertised.
- A method, act or practice made unlawful by the Banking Code, Motor Carrier Act, Savings Bank Act, Credit Union Act, or the enabling act for the Michigan Public Service Commission (1939 PA 3, which provides for the regulation of certain utilities), except for the purposes of a lawsuit by a person other than the attorney general or a prosecuting attorney as described below.
- An unfair, unconscionable, or deceptive method, act, or practice made unlawful by Chapter 20 of the Insurance Code.

### Remedies

Section 11 of the MCPA provides for the following remedies:

- **A person<sup>1</sup> who suffers a loss** due to a violation of the MCPA may sue to recover actual damages or \$250, whichever is greater, along with reasonable attorney fees.
- **Any person** may sue to obtain a declaratory judgment that a method, act, or practice is unlawful under the act or to obtain an injunction against a person who is engaging or about to engage in a method, act, or practice that is unlawful under the act. Recovery of attorney fees is not provided.
- The attorney general or a prosecuting attorney may bring an action to permanently enjoin a defendant from engaging in a method, act, or practice that is unlawful under the act, and a court may assess a fine of up to \$25,000 if the method, act, or conduct is found to be unlawful.

Under certain circumstances, a class action may be brought by a person who suffers loss as a result of a violation of the MCPA on the behalf of others for actual damages. The attorney general or a prosecuting attorney also may bring a class action for actual damages in certain cases.

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<sup>1</sup> The MCPA defines “person” to mean an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or any other legal entity.

## **Statute of Limitations**

An action must be brought within six years after the occurrence of the method, act, or practice that is the subject of the action or no later than one year after the last payment in a transaction involving that method, act, or practice, whichever time period ends at a later date.

## **Supreme Court Decisions**

Section 4(1)(a) of the MCPA exempts a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under state or federal law. The Michigan Supreme Court has held that this exemption applies when “the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.”<sup>2</sup> That is, a transaction or conduct whose legality under the MCPA is in dispute is exempt under section 4(1)(a) as long as the general activity is authorized. For example, if a business is an industry regulated under a state or federal law and the transaction or conduct alleged to be deceptive is within the regulatory scheme of that industry, the exemption under section 4(1)(a) would likely apply and a person could not—under the MCPA—sue for damages or petition to have the business stop engaging in the conduct alleged to be deceptive.

## **Recent Activity**

The following acts amending the MCPA were enacted in the 2021-22 legislative session:

2021 PA 46 and 2022 PA 22 (HBs [4015](#) and [5294](#)) require third-party entities that offer online services performed by a governmental agency in Michigan to provide notification to consumers if they are not affiliated with or under contract to perform those services for the governmental entity and to provide a conspicuous notice of any fee charged for the online service. The bills also prohibit a person that is not part of or associated with a governmental entity from falsely claiming or implying to be so or from simulating certain kinds of judicial or administrative documents.

2022 PAs 152 and 153 (HBs [5486](#) and [5487](#)) amended the MCPA to regulate online marketplaces and high-volume third-party sellers on those marketplaces. Among other things, the new acts require high-volume third-party sellers to provide certain information to online marketplaces, require a marketplace to verify specified information and disclose specified information to consumers, and add a violation of the new regulations to the list of actions that constitute the unlawful practice of trade or commerce.

## **Additional Resources**

- [The Michigan Consumer Protection Act](#)
- Michigan Administrative Code, [R 14.51 to R 14.62](#) (rules implementing the MCPA)

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<sup>2</sup> *Smith v Globe Life Insurance Company*, 460 Mich 446 (1999). The court affirmed *Smith* in *Liss v Lewiston-Richards, Inc.*, 478 Mich 203 (2007).