

MICHIGAN COLLECTION PRACTICES ACT (MCPA)

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Preceding § 445.251

AN ACT to regulate the collection practices of certain persons; to provide for the powers and duties of certain state agencies; and to provide penalties and civil fines.

§ 445.251. Definitions.

Sec. 1. As used in this act:

(a) "Claim" or "debt" means an obligation or alleged obligation for the payment of money or thing of value arising out of an expressed or implied agreement or contract for a purchase made primarily for personal, family, or household purposes.

(b) "Collection agency" means a person directly or indirectly engaged in soliciting a claim for

collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another person, arising out of an expressed or implied agreement. Collection agency includes a person representing himself or herself as a collection or repossession agency or a person performing the activities of a collection agency, on behalf of another, which activities are regulated by Act No. 299 of the Public Acts of 1980, as amended, being **sections 339.101 to 339.2601 of the Michigan Compiled Laws**. Collection agency includes a person who furnishes or attempts to furnish a form or a written demand service represented to be a collection or repossession technique, device, or system to be used to collect or repossess claims, if the form contains the name of a person other than the creditor in a manner indicating that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency includes a person who uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been employed to collect or repossess the claim.

(c) "Communicate" means the conveying of information regarding a debt directly or indirectly to a person through any medium.

(d) "Consumer" or "debtor" means a natural person obligated or allegedly obligated to pay a debt.

(e) "Creditor" or "principal" means a person who offers or extends credit creating a debt or a person to whom a debt is owed or due or asserted to be owed or due. Creditor or principal does not include a person who receives an assignment or transfer of a debt solely for the purpose of facilitating collection of the debt for the assignor or transferor. In those instances, the assignor or transferor of the debt shall continue to be considered the creditor or the principal for purposes of this act.

(f) "Person" means an individual, sole proprietorship, partnership, association, or corporation.

(g) "Regulated person" means a person whose collection activities are confined and are directly related to the operation of a business other than that of a collection agency including the following:

(i) A regular employee when collecting accounts for 1 employer if the collection efforts are carried on in the name of the employer.

- (ii) A state or federally chartered bank when collecting its own claim.
- (iii) A trust company when collecting its own claim.
- (iv) A state or federally chartered savings and loan association when collecting its own claim.
- (v) A state or federally chartered credit union when collecting its own claim.
- (vi) A licensee under Act No. 21 of the Public Acts of 1939, as amended, being **sections**

493.1 to 493.26 of the Michigan Compiled Laws.

(vii) A business licensed by the state under a regulatory act by which collection activity is regulated.

(viii) An abstract company doing an escrow business.

(ix) A licensed real estate broker or salesperson if the claim being handled by the broker or salesperson is related to or in connection with the broker or salesperson's real estate business.

(x) A public officer or a person acting under court order.

(xi) An attorney handling claims and collections on behalf of a client and in the attorney's own name.

§ 445.252. Prohibited acts.

Sec. 2. A regulated person shall not commit 1 or more of the following acts:

(a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless the regulated person is an attorney or is a credit bureau and it is disclosed that it is the collection department of the credit bureau.

(b) Using forms or instruments which simulate the appearance of judicial process.

(c) Using seals or printed forms of a government agency or instrumentality.

(d) Using forms that may otherwise induce the belief that they have judicial or official sanction.

(e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.

(f) Misrepresenting in a communication with a debtor 1 or more of the following:

(i) The legal status of a legal action being taken or threatened.

(ii) The legal rights of the creditor or debtor.

(iii) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.

(iv) That accounts have been turned over to innocent purchasers for value.

(g) Communicating with a debtor without accurately disclosing the caller's identity or cause expenses to the debtor for a long distance telephone call, telegram, or other charge.

(h) Communicating with a debtor, except through billing procedure when the debtor is actively represented by an attorney, the attorney's name and address are known, and the attorney has been contacted in writing by the credit grantor or the credit grantor's representative or agent, unless the attorney representing the debtor fails to answer written communication or fails to discuss the claim on its merits within 30 days after receipt of the written communication.

(i) Communicating information relating to a debtor's indebtedness to an employer or an employer's agent unless the communication is specifically authorized in writing by the debtor subsequent to the forwarding of the claim for collection, the communication is in response to an inquiry initiated by the debtor's employer or the employer's agent, or the communication is for the purpose of acquiring location information about the debtor.

(j) Using or employing, in connection with collection of a claim, a person acting as a peace or law enforcement officer or any other officer authorized to serve legal papers.

(k) Using or threatening to use physical violence in connection with collection of a claim.

(l) Publishing, causing to be published, or threatening to publish lists of debtors, except for credit reporting purposes, when in response to a specific inquiry from a prospective credit grantor about a debtor.

(m) Using a shame card, shame automobile, or otherwise bring to public notice that the consumer is a debtor, except with respect to a legal proceeding which is instituted.

(n) Using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor. All communications shall be made from 8 a.m. to 9 p.m. unless the debtor expressly agrees in writing to communications at another time. All telephone communications made from 9 p.m. to 8 a.m. shall be presumed to be made at an inconvenient time in the absence of facts to the contrary.

(o) Using profane or obscene language.

(p) Using a method contrary to a postal law or regulation to collect an account.

(q) Failing to implement a procedure designed to prevent a violation by an employee.

(r) Communicating with a consumer regarding a debt by post card.

(s) Employing a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being **sections 339.901 to 339.916 of the Michigan Compiled Laws**, to collect a claim unless that person is licensed under article 9 of Act No. 299 of the Public Acts of 1980.

§ 445.253. Cease and desist order; hearing; failure to comply with order; action in circuit court; fine.

Sec. 3. (1) The attorney general may order a regulated person to cease and desist from violating this act.

(2) A regulated person ordered to cease and desist is entitled to a hearing before the appropriate officer as determined by the attorney general if he or she files a written request within 30 days after the effective date of the order.

(3) If a regulated person fails to comply with a cease and desist order issued pursuant to this act, the attorney general may commence an action in the circuit court for Ingham county or in a circuit court for a county where the person is doing business, to enjoin violations of the cease and desist order or to seek enforcement of a previously issued order. The court may impose a fine or not more than \$500.00 for each violation of the cease and desist order.

§ 445.254. Action to restrain act or practice; injunction and other equitable orders or judgments.

Sec. 4. The attorney general may bring an action to restrain, by temporary or permanent injunction, an act or practice in violation of this act. The action may be brought in the circuit court for the county where the defendant resides or conducts business. The court may issue a temporary or permanent injunction and make other equitable orders or judgments, including restitution to consumers.

§ 445.255. Assurance of discontinuance; contents; filing; record; opening closed matter

for further proceedings.

Sec. 5. When the attorney general has authority to institute an action pursuant to section 4, the attorney general may accept an assurance of discontinuance of any method, act, or practice from the person alleged to be engaged in or to have been engaged in a violation. The assurance may include the stipulation for the voluntary payment, by the person, of the costs of investigation, an amount for restitution to aggrieved persons, or both. An assurance of discontinuance shall be in writing and filed with the circuit court. The clerk of the court shall maintain a record of the filings. A matter closed pursuant to this section may be opened by the attorney general for further proceedings.

§ 445.256. Wilful violation of act or engaging in recurring course of wilful conduct in violation of act; penalties.

Sec. 6. (1) In an action brought under this act, if the court finds that a regulated person has wilfully violated this act, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil fine not exceeding \$500.00 per violation.

(2) A regulated person engaging in a recurring course of wilful conduct in violation of this act shall be fined not more than \$5,000.00 for the first offense, and not more than \$10,000.00, or imprisoned for not more than 1 year, or both, for a second or subsequent offense.

§ 445.257. Action for damages or equitable relief; amount of recovery; civil fine; attorney's fees and court costs.

Sec. 7. (1) A person who suffers injury, loss, or damage, or from whom money was collected by the use of a method, act, or practice in violation of this act may bring an action for damages or other equitable relief.

(2) In an action brought pursuant to subsection (1), if the court finds for the petitioner, recovery shall be in the amount of actual damages or \$50.00, whichever is greater. If the court finds that the method, act, or practice was a wilful violation, the court may assess a civil fine of not less

than 3 times the actual damages, or \$150.00, whichever is greater, and shall award reasonable attorney's fees and court costs incurred in connection with the action.

§ 445.258. Communications with person other than debtor for purpose of acquiring location information; required statements.

Sec. 8. (1) A regulated person communicating with any person other than the debtor, for the purpose of acquiring location information about the debtor, shall state all of the following:

- (a) The name of the individual seeking the location information.
- (b) Whether the purpose of the communication is for confirmation or correction of location information about the debtor.

(2) For purposes of this act, location information shall consist only of a debtor's place of abode and place of employment and the telephone number at each place.