

REGULATORY LOAN ACT (EXCERPT)

Act 21 of 1939

493.12c False, misleading, deceptive, or irresponsible advertising; report to attorney general; action to restrain by temporary or permanent injunction; costs; civil penalty; notice to licensee; assurance of discontinuance; violation subject to civil penalty; jurisdiction, continuance of cause, and petition for recovery of civil penalty; effect of action or failure to act by commissioner.

Sec. 12c. (1) If the commissioner has probable cause to believe that a licensee has engaged, is engaged, or is about to engage in advertising that is false, misleading, deceptive, or irresponsible as defined in section 12a, and upon notice given in accordance with this section, the commissioner shall report the matter to the attorney general. The attorney general or the commissioner may bring an action to restrain the licensee by temporary or permanent injunction from engaging in the advertising. The action may be brought in the circuit court for the county where the licensee is established or conducts business or in the circuit court for Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 12a the court may assess the defendant a civil penalty of not more than \$5,000.00.

(2) Unless waived by the court on good cause shown, not less than 10 days before the commencement of a proceeding under this section the commissioner shall notify the licensee of the intended referral to the attorney general and provide the licensee an opportunity to cease and desist from the alleged unlawful advertising or to confer with the commissioner in person, by counsel, or by other representative as to the proposed action before the proposed filing date.

(3) Service of the notice may be given to the licensee by mail, postage prepaid, to the licensee's usual place of business or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(4) If the commissioner has authority to institute a proceeding under this section, the commissioner, upon the concurrence of the attorney general, may accept an assurance of discontinuance of advertising that is alleged to be unlawful under section 12a from the person who is alleged to have engaged, be engaging, or be about to engage in the advertising. The assurance does not constitute an admission of guilt nor can it be introduced in any other proceeding. An assurance of discontinuance shall be in writing and filed with the circuit court for Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by the court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by the court for good cause.

(5) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued under this section is subject to a civil penalty of not more than \$500.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, and the cause shall be continued. The attorney general or the commissioner may petition for recovery of a civil penalty as provided by this section.

(6) The action or the failure to act by the commissioner under this section shall not be considered specific authorization of conduct barring the attorney general from bringing an action under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1992, Act 71, Imd. Eff. June 2, 1992;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.