

FIRST REGULAR SESSION

SENATE BILL NO. 489

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time February 23, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2279S.011

AN ACT

To repeal section 407.025, RSMo, and to enact in lieu thereof one new section relating to exemptions for certain entities from civil actions brought under unlawful merchandising practices provisions of law.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 407.025, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 407.025, to read as follows:

407.025. 1. Any person who purchases or leases merchandise primarily
2 for personal, family or household purposes and thereby suffers an ascertainable
3 loss of money or property, real or personal, as a result of the use or employment
4 by another person, **except for the exempt entities listed in subsection 2 of**
5 **section 407.020**, of a method, act or practice declared unlawful by section
6 407.020, may bring a private civil action in either the circuit court of the county
7 in which the seller or lessor resides or in which the transaction complained of
8 took place, to recover actual damages. The court may, in its discretion, award
9 punitive damages and may award to the prevailing party attorney's fees, based
10 on the amount of time reasonably expended, and may provide such equitable
11 relief as it deems necessary or proper.

12 2. Persons entitled to bring an action pursuant to subsection 1 of this
13 section may, if the unlawful method, act or practice has caused similar injury to
14 numerous other persons, institute an action as representative or representatives
15 of a class against one or more defendants as representatives of a class, and the
16 petition shall allege such facts as will show that these persons or the named
17 defendants specifically named and served with process have been fairly chosen
18 and adequately and fairly represent the whole class, to recover damages as
19 provided for in subsection 1 of this section. The plaintiff shall be required to

20 prove such allegations, unless all of the members of the class have entered their
21 appearance, and it shall not be sufficient to prove such facts by the admission or
22 admissions of the defendants who have entered their appearance. In any action
23 brought pursuant to this section, the court may in its discretion order, in addition
24 to damages, injunction or other equitable relief and reasonable attorney's fees.

25 3. An action may be maintained as a class action in a manner consistent
26 with Rule 23 of the Federal Rules of Civil Procedure and Missouri rule of civil
27 procedure 52.08 to the extent such state rule is not inconsistent with the federal
28 rule if:

29 (1) The class is so numerous that joinder of all members is impracticable;

30 (2) There are questions of law or fact common to the class;

31 (3) The claims or defenses of the representative parties are typical of the
32 claims or defenses of the class; and

33 (4) The representative parties will fairly and adequately protect the
34 interests of the class; and, in addition

35 (5) The prosecution of separate action by or against individual members
36 of the class would create a risk of:

37 (a) Inconsistent or varying adjudications with respect to individual
38 members of the class which would establish incompatible standards of conduct for
39 the party opposing the class; or

40 (b) Adjudications with respect to individual members of the class which
41 would as a practical matter be dispositive of the interests of the other members
42 not parties to the adjudications or substantially impair or impede their ability to
43 protect their interests; or

44 (6) The party opposing the class has acted or refused to act on grounds
45 generally applicable to the class, thereby making appropriate final injunctive
46 relief or corresponding declaratory relief with respect to the class as a whole; or

47 (7) The court finds that the questions of law or fact common to the
48 members of the class predominate over any questions affecting only individual
49 members, and that a class action is superior to other available methods for the
50 fair and efficient adjudication of the controversy. The matters pertinent to the
51 findings include:

52 (a) The interest of members of the class in individually controlling the
53 prosecution or defense of separate actions;

54 (b) The extent and nature of any litigation concerning the controversy
55 already commenced by or against members of the class;

56 (c) The desirability or undesirability of concentrating the litigation of the
57 claims in the particular forum;

58 (d) The difficulties likely to be encountered in the management of a class
59 action.

60 4. (1) As soon as practicable after the commencement of an action brought
61 as a class action, the court shall determine by order whether it is to be so
62 maintained. An order pursuant to this subdivision may be conditional, and may
63 be altered or amended before the decision on the merits.

64 (2) In any class action maintained pursuant to subdivision (7) of
65 subsection 3 of this section, the court shall direct to the members of the class the
66 best notice practicable under the circumstances, including individual notice to all
67 members who can be identified through reasonable effort. The notice shall advise
68 each member that:

69 (a) The court will exclude such member from the class if such member so
70 requests by a specified date;

71 (b) The judgment, whether favorable or not, will include all members who
72 do not request exclusion; and

73 (c) Any member who does request exclusion may, if such member desires,
74 enter an appearance through such member's counsel.

75 (3) The judgment in an action maintained as a class action pursuant to
76 subdivision (5) of subsection 3 of this section or subdivision (6) of subsection 3 of
77 this section, whether or not favorable to the class, shall include and describe
78 those whom the court finds to be members of the class. The judgment in an
79 action maintained as a class action pursuant to subdivision (7) of subsection 3 of
80 this section, whether or not favorable to the class, shall include and specify or
81 describe those to whom the notice provided in subdivision (2) of this subsection
82 was directed, and who have requested exclusion, and whom the court finds to be
83 members of the class.

84 (4) When appropriate an action may be brought or maintained as a class
85 action with respect to particular issues, or a class may be divided into subclasses
86 and each subclass treated as a class, and the provisions of this section shall then
87 be construed and applied accordingly.

88 5. In the conduct of actions to which this section applies, the court may
89 make appropriate orders:

90 (1) Determining the course of proceedings or prescribing measures to
91 prevent undue repetition or complication in the presentation of evidence or

92 argument;

93 (2) Requiring, for the protection of the members of the class or otherwise
94 for the fair conduct of the action, that notice be given in such manner as the court
95 may direct to some or all of the members of any step in the action, or of the
96 proposed extent of the judgment, or of the opportunity of members to signify
97 whether they consider the representation fair and adequate, to intervene and
98 present claims or defenses, or otherwise to come into the action;

99 (3) Imposing conditions on the representative parties or on intervenors;

100 (4) Requiring that the pleadings be amended to eliminate therefrom
101 allegations as to representation of absent persons, and that the action proceed
102 accordingly;

103 (5) Dealing with similar procedural matters.

104 6. A class action shall not be dismissed or compromised without the
105 approval of the court, and notice of the proposed dismissal or compromise shall
106 be given to all members of the class in such manner as the court directs.

107 7. Upon commencement of any action brought pursuant to subsection 1
108 of this section, the plaintiff or plaintiffs shall inform the clerk of the court in
109 which such action is brought, on forms to be provided by such clerk, that the
110 action is brought pursuant to this section. The clerk of the court shall forthwith
111 inform the attorney general of the commencement of such action, together with
112 a copy of the complaint or other initial pleading, and, upon entry of any judgment
113 or decree in the action, the clerk shall mail a copy of such judgment or decree to
114 the attorney general.

115 8. Any permanent injunction, judgment or order of the court made
116 pursuant to section 407.100 shall be prima facie evidence in an action brought
117 pursuant to this section that the respondent used or employed a method, act or
118 practice declared unlawful by section 407.020.

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