

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 832

AN ACT

To repeal sections 407.020, 407.025, and 537.762, RSMo, and to enact in lieu thereof seven new sections relating to civil actions, with an existing penalty provision.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1       Section A. Sections 407.020, 407.025, and 537.762, RSMo,  
2       are repealed and seven new sections enacted in lieu thereof, to  
3       be known as sections 407.012, 407.020, 407.025, 407.027, 537.761,  
4       537.762, and 537.763, to read as follows:

5       407.012. 1. In a civil action brought under section  
6       407.025, absent a state statute to the contrary, the courts shall  
7       be guided by the policies of the Federal Trade Commission and  
8       interpretations given by the Federal Trade Commission and the  
9       federal courts to Section 5(a)(1) of the Federal Trade Commission  
10      Act, 15 U.S.C. Section 45(a)(1), as amended.

11      2. Section 407.025 shall not apply to actions or  
12      transactions otherwise permitted, approved, or regulated by the  
13      Federal Trade Commission or any other regulatory agency acting  
14      under statutory authority of this state or the United States.

15      407.020. 1. The act, use or employment by any person of  
16      any deception, fraud, false pretense, false promise,

1 misrepresentation, unfair practice or the concealment,  
2 suppression, or omission of any material fact in connection with  
3 the sale or advertisement of any merchandise in trade or commerce  
4 or the solicitation of any funds for any charitable purpose, as  
5 defined in section 407.453, in or from the state of Missouri, is  
6 declared to be an unlawful practice. The use by any person, in  
7 connection with the sale or advertisement of any merchandise in  
8 trade or commerce or the solicitation of any funds for any  
9 charitable purpose, as defined in section 407.453, in or from the  
10 state of Missouri of the fact that the attorney general has  
11 approved any filing required by this chapter as the approval,  
12 sanction or endorsement of any activity, project or action of  
13 such person, is declared to be an unlawful practice. Any act,  
14 use or employment declared unlawful by this subsection violates  
15 this subsection whether committed before, during or after the  
16 sale, advertisement or solicitation.

17 2. Nothing contained in this section shall apply to:

18 (1) The owner or publisher of any newspaper, magazine,  
19 publication or printed matter wherein such advertisement appears,  
20 or the owner or operator of a radio or television station which  
21 disseminates such advertisement when the owner, publisher or  
22 operator has no knowledge of the intent, design or purpose of the  
23 advertiser; [or]

24 (2) Any institution, company, or entity that is subject to  
25 chartering, licensing, or regulation by the director of the  
26 department of insurance, financial institutions and professional  
27 registration under chapter 354 or chapters 374 to 385, the  
28 director of the division of credit unions under chapter 370, or

1 director of the division of finance under chapters 361 to 369, or  
2 chapter 371, unless such directors specifically authorize the  
3 attorney general to implement the powers of this chapter or such  
4 powers are provided to either the attorney general or a private  
5 citizen by statute; or

6 (3) Any advertisement, merchandise, or transaction in which  
7 the merchandise consists of a new residence in a transaction in  
8 which the buyer is offered in the sale contract an express  
9 warranty by the builder or through a third party warranty company  
10 paid for by the builder and the sale contract contains  
11 substantially the following disclaimer in all capital letters  
12 with characters of at least ten point type:

13 THIS CONTRACT, MERCHANDISE, AND PROPERTY CONVEYED UNDER THIS  
14 CONTRACT AND THE TRANSACTION BETWEEN THE SELLER AND BUYER IS  
15 EXCLUDED FROM COVERAGE UNDER THE MERCHANDISING PRACTICES ACT,  
16 SECTIONS 407.010 TO 407.130.

17  
18 As used in this subdivision, the term "residence" shall mean a  
19 single-family house, duplex, triplex, quadruplex, or a unit in a  
20 multiunit residential structure in which title to each individual  
21 unit is transferred to the owner under a condominium or  
22 cooperative system, and shall include common areas and common  
23 elements as defined in subdivision (4) of section 448.1-103.

24 3. Any person who willfully and knowingly engages in any  
25 act, use, employment or practice declared to be unlawful by this  
26 section with the intent to defraud shall be guilty of a class E  
27 felony.

28 4. It shall be the duty of each prosecuting attorney and

1 circuit attorney in their respective jurisdictions to commence  
2 any criminal actions under this section, and the attorney general  
3 shall have concurrent original jurisdiction to commence such  
4 criminal actions throughout the state where such violations have  
5 occurred.

6 5. It shall be an unlawful practice for any long-term care  
7 facility, as defined in section 192.2300, except a facility which  
8 is a residential care facility or an assisted living facility, as  
9 defined in section 198.006, which makes, either orally or in  
10 writing, representation to residents, prospective residents,  
11 their families or representatives regarding the quality of care  
12 provided, or systems or methods utilized for assurance or  
13 maintenance of standards of care to refuse to provide copies of  
14 documents which reflect the facility's evaluation of the quality  
15 of care, except that the facility may remove information that  
16 would allow identification of any resident. If the facility is  
17 requested to provide any copies, a reasonable amount, as  
18 established by departmental rule, may be charged.

19 6. Any long-term care facility, as defined in section  
20 192.2300, which commits an unlawful practice under this section  
21 shall be liable for damages in a civil action of up to one  
22 thousand dollars for each violation, and attorney's fees and  
23 costs incurred by a prevailing plaintiff, as allowed by the  
24 circuit court.

25 407.025. 1. Any person who purchases or leases merchandise  
26 primarily for personal, family or household purposes and thereby  
27 suffers an ascertainable loss of money or property, real or  
28 personal, as a result of the use or employment by another person

1 of a method, act or practice declared unlawful by section  
2 407.020, may bring a private civil action in either the circuit  
3 court of the county in which the seller or lessor resides or in  
4 which the transaction complained of took place, to recover actual  
5 damages. A person seeking to recover damages shall demonstrate  
6 that he or she acted reasonably in light of all the  
7 circumstances, prove that the method, act, or practice declared  
8 unlawful by section 407.020 cause him or her to enter into the  
9 transaction that resulted in his or her damages, and establish  
10 individual damages with sufficiently definitive and objective  
11 evidence to allow the loss to be calculated with a reasonable  
12 degree of certainty. The damages shall be measured by the  
13 person's out-of-pocket loss. The court may, in its discretion,  
14 award punitive damages [and]. The court may, in its discretion,  
15 award to the prevailing party attorney's fees, based on the  
16 amount of time reasonably expended, and may provide such  
17 [equitable] injunctive relief as it deems necessary or proper to  
18 protect the prevailing party from the methods, acts, or practices  
19 declared unlawful by section 407.020. No claim may be brought  
20 under this section to recover damages for personal injury or  
21 death. A cause of action under this section accrues on the date  
22 of the purchase or lease described in the first sentence of this  
23 section.

24 2. Persons entitled to bring an action pursuant to  
25 subsection 1 of this section may, if the unlawful method, act or  
26 practice has caused similar injury to numerous other persons,  
27 institute an action as representative or representatives of a  
28 class against one or more defendants as representatives of a

1 class, and the petition shall allege such facts as will show that  
2 these persons or the named defendants specifically named and  
3 served with process have been fairly chosen and adequately and  
4 fairly represent the whole class, to recover damages as provided  
5 for in subsection 1 of this section. The plaintiff shall be  
6 required to prove such allegations, unless all of the members of  
7 the class have entered their appearance, and it shall not be  
8 sufficient to prove such facts by the admission or admissions of  
9 the defendants who have entered their appearance. In any action  
10 brought pursuant to this section, the court may in its discretion  
11 [order, in addition to damages, injunction or other equitable  
12 relief and] enjoin the methods, acts, or practices declared  
13 unlawful by section 407.020. The court may also determine a  
14 proposed award of reasonable attorney's fees for the counsel to  
15 the class. Attorney's fees, if awarded, shall bear a reasonable  
16 relationship to the amount of the judgment.

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

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

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

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

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

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

3           (a) Inconsistent or varying adjudications with respect to  
4 individual members of the class which would establish  
5 incompatible standards of conduct for the party opposing the  
6 class; or

7           (b) Adjudications with respect to individual members of the  
8 class which would as a practical matter be dispositive of the  
9 interests of the other members not parties to the adjudications  
10 or substantially impair or impede their ability to protect their  
11 interests; or

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

16           (7) The court finds that the questions of law or fact  
17 common to the members of the class predominate over any questions  
18 affecting only individual members, and that a class action is  
19 superior to other available methods for the fair and efficient  
20 adjudication of the controversy. The matters pertinent to the  
21 findings include:

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

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

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

28           (d) The difficulties likely to be encountered in the

1 management of a class action.

2 4. (1) As soon as practicable after the commencement of an  
3 action brought as a class action, the court shall determine by  
4 order whether it is to be so maintained. An order pursuant to  
5 this subdivision may be conditional, and may be altered or  
6 amended before the decision on the merits. An order permitting a  
7 class action shall specify how the class claims and any issues  
8 affecting only individual members, raised by the claims or  
9 defenses asserted in the pleadings, will be tried in a  
10 manageable, time efficient manner.

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

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

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

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

24 (3) The judgment in an action maintained as a class action  
25 pursuant to subdivision (5) of subsection 3 of this section or  
26 subdivision (6) of subsection 3 of this section, whether or not  
27 favorable to the class, shall include and describe those whom the  
28 court finds to be members of the class. The judgment in an



1 action maintained as a class action pursuant to subdivision (7)  
2 of subsection 3 of this section, whether or not favorable to the  
3 class, shall include and specify or describe those to whom the  
4 notice provided in subdivision (2) of this subsection was  
5 directed, and who have requested exclusion, and whom the court  
6 finds to be members of the class.

7 (4) When appropriate, in a case that otherwise meets the  
8 class action requirements of subsection 3 of this section, an  
9 action may be brought or maintained as a class action with  
10 respect to particular issues, or a class may be divided into  
11 subclasses and each subclass treated as a class, and the  
12 provisions of this section shall then be construed and applied  
13 accordingly.

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

16 (1) Determining the course of proceedings or prescribing  
17 measures to prevent undue repetition or complication in the  
18 presentation of evidence or argument;

19 (2) Requiring, for the protection of the members of the  
20 class or otherwise for the fair conduct of the action, that  
21 notice be given in such manner as the court may direct to some or  
22 all of the members of any step in the action, or of the proposed  
23 extent of the judgment, or of the opportunity of members to  
24 signify whether they consider the representation fair and  
25 adequate, to intervene and present claims or defenses, or  
26 otherwise to come into the action;

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

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

4           (5) Dealing with similar procedural matters.

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

9           7. Upon commencement of any action brought pursuant to  
10          subsection 1 of this section, the plaintiff or plaintiffs shall  
11          inform the clerk of the court in which such action is brought, on  
12          forms to be provided by such clerk, that the action is brought  
13          pursuant to this section. The clerk of the court shall forthwith  
14          inform the attorney general of the commencement of such action,  
15          together with a copy of the complaint or other initial pleading,  
16          and, upon entry of any judgment or decree in the action, the  
17          clerk shall mail a copy of such judgment or decree to the  
18          attorney general.

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

24          9. In order to recover damages in a class action that has  
25          been certified under this section, each class member shall be  
26          required to prove that his or her damages were proximately caused  
27          by the method, act, or practice declared unlawful by section  
28          407.020, and that the method, act, or practice caused the class

1 member to enter into the transaction that resulted in his or her  
2 damages. The court shall not infer that damages proven to have  
3 been suffered by one or more class members were suffered by all  
4 class members.

5 10. In a class action that has been certified under this  
6 section, prior to an entry of a judgment against a defendant, the  
7 court shall require each member of the class claiming to be  
8 entitled to monetary relief to submit a statement in a form  
9 prescribed by the court requesting a specific dollar amount and  
10 providing information regarding the nature of his or her loss,  
11 injury, claim, or damages. No award of damages under this  
12 section shall be made without objective proof that the person or  
13 persons seeking damages suffered actual damages. No judgment  
14 shall be entered until the trier of fact has determined the  
15 amount of money, if any, owed to each member based upon his or  
16 her individual proof. The amount of judgment shall not exceed  
17 the sum of money owed to each class member. The judgment shall  
18 identify each member of the class and his or her individual  
19 monetary award.

20 407.027. The provisions of sections 407.012, 407.020, and  
21 407.025 as enacted by this act shall only apply to causes of  
22 action that accrue on or after the effective date of this act.

23 537.761. 1. In a products liability action in which a  
24 plaintiff alleges a design defect, the burden is on the plaintiff  
25 to prove by a preponderance of the evidence that:

26 (1) There was a safer alternative design; and

27 (2) The defect was a proximate and producing cause of the  
28 personal injury, property damage, or death for which the

1 plaintiff seeks recovery.

2 2. As used in this section, "safer alternative design"  
3 means a product design other than the one actually used that in  
4 reasonable probability:

5 (1) Would have prevented or significantly reduced the risk  
6 of the plaintiff's personal injury, property damage, or death  
7 without substantially impairing the product's utility; and

8 (2) Was economically and technologically feasible at the  
9 time the product left the control of the manufacturer or seller  
10 by the application of existing or reasonably achievable  
11 scientific knowledge.

12 537.762. 1. A defendant whose liability is based solely on  
13 his status as a seller in the stream of commerce may be dismissed  
14 from a products liability claim as provided in this section.

15 2. This section shall apply to any products liability claim  
16 in which another defendant, including the manufacturer, is  
17 properly before the court and from whom total recovery may be had  
18 for plaintiff's claim.

19 3. A defendant may move for dismissal under this section  
20 within the time for filing an answer or other responsive pleading  
21 unless permitted by the court at a later time for good cause  
22 shown. The motion shall be accompanied by an affidavit which  
23 shall be made under oath and shall state that the defendant is  
24 aware of no facts or circumstances upon which a verdict might be  
25 reached against him, other than his status as a seller in the  
26 stream of commerce.

27 4. The parties shall have sixty days in which to conduct  
28 discovery on the issues raised in the motion and affidavit. The

1 court for good cause shown, may extend the time for discovery,  
2 and may enter a protective order pursuant to the rules of civil  
3 procedure regarding the scope of discovery on other issues.

4 5. Any party may move for a hearing on a motion to dismiss  
5 under this section. If the requirements of subsections 2 and 3  
6 of this section are met, and no party comes forward at such a  
7 hearing with evidence of facts which would render the defendant  
8 seeking dismissal under this section liable on some basis other  
9 than his status as a seller in the stream of commerce, the court  
10 shall dismiss without prejudice the claim as to that defendant.

11 6. [No order of dismissal under this section shall operate  
12 to divest a court of venue or jurisdiction otherwise proper at  
13 the time the action was commenced. A defendant dismissed  
14 pursuant to this section shall be considered to remain a party to  
15 such action only for such purposes.

16 7.] An order of dismissal under this section shall be  
17 interlocutory until final disposition of plaintiff's claim by  
18 settlement or judgment and may be set aside for good cause shown  
19 at anytime prior to such disposition.

20 537.763. The provisions of sections 537.761 and 537.762 as  
21 enacted by this act shall only apply to causes of action that  
22 accrue on or after the effective date of this act.

23 Section B. If any provision of sections 407.012, 407.020,  
24 407.025, 407.027, 537.761, 537.762, and 537.763 or the  
25 application thereof to anyone or to any circumstance is held  
26 invalid, the remainder of those sections and the application of  
27 such provisions to others or other circumstances shall not be  
28 affected thereby.