

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 832
99TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, February 12, 2018, with recommendation that the Senate Committee Substitute do pass.

5036S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 407.020, 407.025, 508.010, and 537.762, RSMo, and to enact in lieu thereof eight new sections relating to civil actions, with an existing penalty provision.

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

Section A. Sections 407.020, 407.025, 508.010, and 537.762, RSMo, are
2 repealed and eight new sections enacted in lieu thereof, to be known as sections
3 407.012, 407.020, 407.025, 407.027, 508.010, 537.761, 537.762, and 537.763, to
4 read as follows:

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

7 **2. Section 407.025 shall not apply to actions or transactions**
8 **otherwise permitted, approved, or regulated by the Federal Trade**
9 **Commission or any other regulatory agency acting under statutory**
10 **authority of this state or the United States.**

407.020. 1. The act, use or employment by any person of any deception,
2 fraud, false pretense, false promise, misrepresentation, unfair practice or the
3 concealment, suppression, or omission of any material fact in connection with the
4 sale or advertisement of any merchandise in trade or commerce or the solicitation
5 of any funds for any charitable purpose, as defined in section 407.453, in or from

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

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

21 (2) Any institution, company, or entity that is subject to chartering,
22 licensing, or regulation by the director of the department of insurance, financial
23 institutions and professional registration under chapter 354 or chapters 374 to
24 385, the director of the division of credit unions under chapter 370, or director of
25 the division of finance under chapters 361 to 369, or chapter 371, unless such
26 directors specifically authorize the attorney general to implement the powers of
27 this chapter or such powers are provided to either the attorney general or a
28 private citizen by statute; or

29 **(3) Any advertisement, merchandise, or transaction in which the**
30 **merchandise consists of a new residence in a transaction in which the**
31 **buyer is offered in the sale contract an express warranty by the builder**
32 **or through a third party warranty company paid for by the builder and**
33 **the sale contract contains substantially the following disclaimer in all**
34 **capital letters with characters of at least ten point type:**

35 **THIS CONTRACT, MERCHANDISE, AND PROPERTY CONVEYED**
36 **UNDER THIS CONTRACT AND THE TRANSACTION BETWEEN THE**
37 **SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER THE**
38 **MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO 407.130.**

39 **As used in this subdivision, the term "residence" shall mean a single-**
40 **family house, duplex, triplex, quadruplex, or a unit in a multiunit**
41 **residential structure in which title to each individual unit is**

42 **transferred to the owner under a condominium or cooperative system,**
43 **and shall include common areas and common elements as defined in**
44 **subdivision (4) of section 448.1-103.**

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

48 4. It shall be the duty of each prosecuting attorney and circuit attorney
49 in their respective jurisdictions to commence any criminal actions under this
50 section, and the attorney general shall have concurrent original jurisdiction to
51 commence such criminal actions throughout the state where such violations have
52 occurred.

53 5. It shall be an unlawful practice for any long-term care facility, as
54 defined in section 192.2300, except a facility which is a residential care facility
55 or an assisted living facility, as defined in section 198.006, which makes, either
56 orally or in writing, representation to residents, prospective residents, their
57 families or representatives regarding the quality of care provided, or systems or
58 methods utilized for assurance or maintenance of standards of care to refuse to
59 provide copies of documents which reflect the facility's evaluation of the quality
60 of care, except that the facility may remove information that would allow
61 identification of any resident. If the facility is requested to provide any copies,
62 a reasonable amount, as established by departmental rule, may be charged.

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

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 of a method, act or practice declared unlawful by section
5 407.020, may bring a private civil action in either the circuit court of the county
6 in which the seller or lessor resides or in which the transaction complained of
7 took place, to recover actual damages. **A person seeking to recover damages**
8 **shall demonstrate that he or she acted reasonably in light of all the**
9 **circumstances and establish his or her individual damages with**
10 **sufficiently definitive and objective evidence to allow the loss to be**
11 **calculated with a reasonable degree of certainty. The damages shall be**

12 **measured by the person's out-of-pocket loss, which shall be defined as**
13 **an amount of money equal to the difference between the amount paid**
14 **by the consumer for the good or service and the actual market value of**
15 **the good or service that the consumer actually received. In order to**
16 **recover damages under this section, each person shall be required to**
17 **prove that the method, act, or practice declared unlawful by section**
18 **407.020 caused him or her to enter into the transaction that resulted in**
19 **his or her damages.** The court may, in its discretion, award punitive damages
20 [and]. **The court may, in its discretion,** award to the prevailing party
21 attorney's fees, based on the amount of time reasonably expended, and may
22 provide such [equitable] **injunctive** relief as it deems necessary or proper to
23 **protect the prevailing party from the methods, acts, or practices**
24 **declared unlawful by section 407.020. No action may be brought under**
25 **this section to recover damages for personal injury or death. A cause**
26 **of action under this section accrues on the date of the purchase or**
27 **lease described in the first sentence of this section.**

28 2. Persons entitled to bring an action pursuant to subsection 1 of this
29 section may, if the unlawful method, act or practice has caused similar injury to
30 numerous other persons, institute an action as representative or representatives
31 of a class against one or more defendants as representatives of a class, and the
32 petition shall allege such facts as will show that these persons or the named
33 defendants specifically named and served with process have been fairly chosen
34 and adequately and fairly represent the whole class, to recover **compensatory**
35 **but not punitive** damages as provided for in subsection 1 of this section. The
36 plaintiff shall be required to prove such allegations, unless all of the members of
37 the class have entered their appearance, and it shall not be sufficient to prove
38 such facts by the admission or admissions of the defendants who have entered
39 their appearance. **In order to recover damages in a class action under**
40 **this section, each class member shall be required to prove that his or**
41 **her damages were proximately caused by the method, act, or practice**
42 **declared unlawful by section 407.020, and that the method, act, or**
43 **practice caused the class member to enter into the transaction that**
44 **resulted in his or her damages. The court shall not infer that damages**
45 **proven to have been suffered by one or more class members were**
46 **suffered by all class members.** In any action brought pursuant to this
47 section, the court may in its discretion [order, in addition to damages, injunction

48 or other equitable relief and] **enjoin the methods, acts, or practices**
49 **declared unlawful by section 407.020. The court may also determine a**
50 **proposed award of** reasonable attorney's fees **for the counsel to the**
51 **class. Attorney's fees, if awarded, shall bear a reasonable relationship**
52 **to the amount of the judgment.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 4. (1) As soon as practicable after the commencement of an action brought
89 as a class action, the court shall determine by order whether it is to be so
90 maintained. An order pursuant to this subdivision may be conditional, and may
91 be altered or amended before the decision on the merits. **An order permitting
92 a class action shall specify how the class claims and any issues
93 affecting only individual members, raised by the claims or defenses
94 asserted in the pleadings, will be tried in a manageable, time efficient
95 manner.**

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

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

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

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

107 (3) **Prior to an entry of a judgment against a defendant in an
108 action maintained as a class action under subsection 3 of this section,
109 the court shall require each member of the class claiming to be entitled
110 to monetary relief to submit a statement in a form prescribed by the
111 court requesting a specific dollar amount and providing information
112 regarding the nature of his or her loss, injury, claim, or damage. No
113 award of damages under this section shall be made without objective
114 proof that the person or persons seeking damages suffered actual
115 damages. No judgment shall be entered until the trier of fact has
116 determined the amount of money, if any, owed to each class member
117 based upon his or her individual proof. The amount of judgment shall
118 not exceed the sum of the money owed to each class member. The
119 judgment shall identify each member of the class and his or her**

120 **individual monetary award.** The judgment in an action maintained as a class
121 action pursuant to subdivision (5) of subsection 3 of this section or subdivision (6)
122 of subsection 3 of this section, whether or not favorable to the class, shall include
123 and describe those whom the court finds to be members of the class. The
124 judgment in an action maintained as a class action pursuant to subdivision (7)
125 of subsection 3 of this section, whether or not favorable to the class, shall include
126 and specify or describe those to whom the notice provided in subdivision (2) of
127 this subsection was directed, and who have requested exclusion, and whom the
128 court finds to be members of the class.

129 (4) When appropriate, **in a case that otherwise meets the class**
130 **action requirements of subsection 3 of this section,** an action may be
131 brought or maintained as a class action with respect to particular issues, or a
132 class may be divided into subclasses and each subclass treated as a class, and the
133 provisions of this section shall then be construed and applied accordingly.

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

136 (1) Determining the course of proceedings or prescribing measures to
137 prevent undue repetition or complication in the presentation of evidence or
138 argument;

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

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

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

149 (5) Dealing with similar procedural matters.

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

153 7. Upon commencement of any action brought pursuant to subsection 1
154 of this section, the plaintiff or plaintiffs shall inform the clerk of the court in
155 which such action is brought, on forms to be provided by such clerk, that the

156 action is brought pursuant to this section. The clerk of the court shall forthwith
157 inform the attorney general of the commencement of such action, together with
158 a copy of the complaint or other initial pleading, and, upon entry of any judgment
159 or decree in the action, the clerk shall mail a copy of such judgment or decree to
160 the attorney general.

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

165 **9. In any suit seeking relief under section 407.025 or any suit for**
166 **product liability, subsection 1 of section 507.040 shall not be satisfied**
167 **if the plaintiffs' claims are based on separate occurrences. Separate**
168 **purchases of the same product or service and separate injuries from**
169 **the same product shall be considered separate occurrences for**
170 **purposes of this section.**

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

508.010. 1. As used in this section, "principal place of residence" shall
2 mean the county which is the main place where an individual resides in the state
3 of Missouri. There shall be a rebuttable presumption that the county of voter
4 registration at the time of injury is the principal place of residence. There shall
5 be only one principal place of residence.

6 2. In all actions in which there is no count alleging a tort, venue shall be
7 determined as follows:

8 (1) When the defendant is a resident of the state, either in the county
9 within which the defendant resides, or in the county within which the plaintiff
10 resides, and the defendant may be found;

11 (2) When there are several defendants, and they reside in different
12 counties, the suit may be brought in any such county;

13 (3) When there are several defendants, some residents and others
14 nonresidents of the state, suit may be brought in any county in this state in
15 which any defendant resides;

16 (4) When all the defendants are nonresidents of the state, suit may be
17 brought in any county in this state.

18 3. The term "tort" shall include claims based upon improper health care,

19 under the provisions of chapter 538.

20 4. Notwithstanding any other provision of law, in all actions in which
21 there is any count alleging a tort and in which the plaintiff was first injured in
22 the state of Missouri, venue shall be in the county where the plaintiff was first
23 injured by the wrongful acts or negligent conduct alleged in the action.

24 5. Notwithstanding any other provision of law, in all actions in which
25 there is any count alleging a tort and in which the plaintiff was first injured
26 outside the state of Missouri, venue shall be determined as follows:

27 (1) If the defendant is a corporation, then venue shall be in any county
28 where a defendant corporation's registered agent is located or, if the plaintiff's
29 principal place of residence was in the state of Missouri on the date the plaintiff
30 was first injured, then venue may be in the county of the plaintiff's principal
31 place of residence on the date the plaintiff was first injured;

32 (2) If the defendant is an individual, then venue shall be in any county
33 of the individual defendant's principal place of residence in the state of Missouri
34 or, if the plaintiff's principal place of residence was in the state of Missouri on the
35 date the plaintiff was first injured, then venue may be in the county containing
36 the plaintiff's principal place of residence on the date the plaintiff was first
37 injured;

38 **(3) In any case in which the cause of action accrued on or after**
39 **the effective date of this subdivision and in which venue is not**
40 **expressly prescribed by subdivisions (1) or (2) of this subsection, venue**
41 **shall be in the county containing the seat of state government;**

42 (4) Notwithstanding subdivisions (1) and (2) of this subsection, if the
43 plaintiff was first injured in a foreign country in connection with any railroad
44 operations therein and any defendant is a:

45 (a) Corporation that, either directly or through its subsidiaries, wholly
46 owns or operates the foreign railroad; or

47 (b) Wholly owned subsidiary of a corporation that, either directly or
48 through its subsidiaries, wholly owns or operates the foreign railroad;
49 then venue shall exclusively be in the county where any such defendant
50 corporation's registered agent is located, regardless of venue as to any other
51 defendant or, if the plaintiff's principal place of residence was in the state of
52 Missouri on the date the plaintiff was first injured, then venue may be in the
53 county of the plaintiff's principal place of residence on the date the plaintiff was
54 first injured.

55 6. Any action, in which any county shall be a plaintiff, may be commenced
56 and prosecuted to final judgment in the county in which the defendant or
57 defendants reside, or in the county suing and where the defendants, or one of
58 them, may be found.

59 7. In all actions, process shall be issued by the court in which the action
60 is filed and process may be served in any county within the state.

61 8. In any action for defamation or for invasion of privacy, the plaintiff
62 shall be considered first injured in the county in which the defamation or
63 invasion was first published.

64 9. In all actions, venue shall be determined as of the date the plaintiff was
65 first injured.

66 10. All motions to dismiss or to transfer based upon a claim of improper
67 venue shall be deemed granted if not denied within ninety days of filing of the
68 motion unless such time period is waived in writing by all parties.

69 11. In a wrongful death action, the plaintiff shall be considered first
70 injured where the decedent was first injured by the wrongful acts or negligent
71 conduct alleged in the action. In any spouse's claim for loss of consortium, the
72 plaintiff claiming consortium shall be considered first injured where the other
73 spouse was first injured by the wrongful acts or negligent conduct alleged in the
74 action.

75 12. The provisions of this section shall apply irrespective of whether the
76 defendant is a for-profit or a not-for-profit entity.

77 13. In any civil action, if all parties agree in writing to a change of venue,
78 the court shall transfer venue to the county within the state unanimously chosen
79 by the parties. If any parties are added to the cause of action after the date of
80 said transfer who do not consent to said transfer then the cause of action shall
81 be transferred to such county in which venue is appropriate under this section,
82 based upon the amended pleadings.

83 14. A plaintiff is considered first injured where the trauma or exposure
84 occurred rather than where symptoms are first manifested.

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

4 **(1) There was a safer alternative design; and**

5 **(2) The defect was a proximate and producing cause of the**
6 **personal injury, property damage, or death for which the plaintiff seeks**

7 recovery.

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

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

14 **(2) Was economically and technologically feasible at the time the**
15 **product left the control of the manufacturer or seller by the application**
16 **of existing or reasonably achievable scientific knowledge.**

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

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

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

13 4. The parties shall have sixty days in which to conduct discovery on the
14 issues raised in the motion and affidavit. The court for good cause shown, may
15 extend the time for discovery, and may enter a protective order pursuant to the
16 rules of civil procedure regarding the scope of discovery on other issues.

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

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

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

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

Section B. If any provision of sections 407.012, 407.020, 407.025, 407.027,
2 508.010, 537.761, 537.762, and 537.763 or the application thereof to anyone or to
3 any circumstance is held invalid, the remainder of those sections and the
4 application of such provisions to others or other circumstances shall not be
5 affected thereby.

✓

Bill

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