

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 62
100TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, March 14, 2019, with recommendation that the Senate Committee Substitute do pass.

0710S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 407.020 and 407.025, RSMo, and to enact in lieu thereof four new sections relating to civil actions, with existing penalty provisions.

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

Section A. Sections 407.020 and 407.025, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 407.020, 407.025,
3 407.026, and 407.027, to read as follows:

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
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

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

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: "THIS**
35 **CONTRACT, MERCHANDISE, AND PROPERTY CONVEYED UNDER**
36 **THIS CONTRACT AND THE TRANSACTION BETWEEN THE SELLER**
37 **AND BUYER IS EXCLUDED FROM COVERAGE UNDER THE**
38 **MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO 407.130,**
39 **RSMO.". As used in this section, the term "residence" shall mean a**
40 **single-family house, duplex, triplex, quadraplex, 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. The court [may, in its discretion, award
8 punitive damages and] may award to the prevailing party attorney's fees, based
9 on the amount of time reasonably expended, and may provide such equitable
10 relief as it deems necessary or proper.

11 [2. Persons entitled to bring an action pursuant to subsection 1 of this
12 section may, if the unlawful method, act or practice has caused similar injury to
13 numerous other persons, institute an action as representative or representatives
14 of a class against one or more defendants as representatives of a class, and the
15 petition shall allege such facts as will show that these persons or the named
16 defendants specifically named and served with process have been fairly chosen
17 and adequately and fairly represent the whole class, to recover damages as
18 provided for in subsection 1 of this section. The plaintiff shall be required to
19 prove such allegations, unless all of the members of the class have entered their
20 appearance, and it shall not be sufficient to prove such facts by the admission or
21 admissions of the defendants who have entered their appearance. In any action
22 brought pursuant to this section, the court may in its discretion order, in addition
23 to damages, injunction or other equitable relief and reasonable attorney's fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59 4. (1) As soon as practicable after the commencement of an action brought

60 as a class action, the court shall determine by order whether it is to be so
61 maintained. An order pursuant to this subdivision may be conditional, and may
62 be altered or amended before the decision on the merits.

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

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

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

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

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

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

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

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

92 (2) Requiring, for the protection of the members of the class or otherwise
93 for the fair conduct of the action, that notice be given in such manner as the court
94 may direct to some or all of the members of any step in the action, or of the
95 proposed extent of the judgment, or of the opportunity of members to signify

96 whether they consider the representation fair and adequate, to intervene and
97 present claims or defenses, or otherwise to come into the action;

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

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

102 (5) Dealing with similar procedural matters.

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

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

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

**407.026. 1. Persons entitled to bring an action pursuant to
2 section 407.025 may, if the unlawful method, act, or practice has caused
3 similar injury to numerous other persons, institute an action as
4 representative or representatives of a class against one or more
5 defendants as representatives of a class, and the petition shall allege
6 such facts as will show that these persons or the named defendants
7 specifically named and served with process have been fairly chosen and
8 adequately and fairly represent the whole class, to recover
9 compensatory but not punitive damages as provided for in section
10 407.025. The plaintiff shall be required to prove such allegations,
11 unless all of the members of the class have entered their appearance,
12 and it shall not be sufficient to prove such facts by the admission or
13 admissions of the defendants who have entered their appearance.**

14 **2. In any action brought pursuant to this section, the court may**

15 in its discretion enjoin the methods, acts, or practices declared
16 unlawful by section 407.020.

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

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

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

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

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

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

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

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

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

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

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

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

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

52 **(d) The difficulties likely to be encountered in the management**
53 **of a class action.**

54 **4. (1) As soon as practicable after the commencement of an**
55 **action brought as a class action, the court shall determine by order**
56 **whether it is to be so maintained. An order pursuant to this**
57 **subdivision may be conditional, and may be altered or amended before**
58 **the decision on the merits. An order permitting a class action shall**
59 **specify how the class claims and any issues affecting only individual**
60 **members, raised by the claims or defenses asserted in the pleadings,**
61 **will be tried in a manageable, time efficient manner.**

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

67 **(a) The court will exclude such member from the class if such**
68 **member so requests by a specified date;**

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

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

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

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

88 **5. In the conduct of actions to which this section applies, the**

89 court may make appropriate orders:

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

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

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

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

105 (5) Dealing with similar procedural matters.

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

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

119 8. Any permanent injunction, judgment, or order of the court
120 made pursuant to section 407.100 shall be prima facie evidence in an
121 action brought pursuant to this section that the respondent used or
122 employed a method, act, or practice declared unlawful by section
123 407.020.

124 9. In a class action that has been certified under this section,
125 prior to entry of a judgment against a defendant, the court shall

126 require each member of the class claiming to be entitled to monetary
127 relief to submit a statement in a form prescribed by the court
128 requesting a specific dollar amount and providing information
129 regarding the nature of his or her loss, injury, claim, or damages. The
130 form shall also require each member to indicate how the loss, injury,
131 claim, or damages was caused by the method, act, or practice declared
132 unlawful by section 407.020. The court shall not infer that damages
133 proven to have been suffered by one or more class members were
134 suffered by all class members. No award of damages under this section
135 shall be made without objective proof that the person or persons
136 seeking damages suffered actual damages caused by the unlawful
137 method, act, or practice. No judgment shall be entered until the trier
138 of fact has determined the amount of money, if any, owed to each
139 member based upon his or her individual proof. The amount of
140 judgment shall not exceed the sum of money owed to each class
141 member. The judgment shall identify each member of the class and his
142 or her monetary award.

143 10. The court may determine an award of reasonable attorney's
144 fees for counsel to the class. Attorney's fees, if awarded, shall bear a
145 reasonable relationship to the amount of the judgment.

 407.027. The repeal and reenactment of section 407.025 and the
2 enactment of section 407.026 of this act shall only apply to causes of
3 action that accrue on or after August 28, 2019.

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