

FIRST REGULAR SESSION

SENATE BILL NO. 276

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time January 17, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0418S.02I

AN ACT

To repeal section 407.025, RSMo, and to enact in lieu thereof one new section relating to civil actions to recover damages for unlawful merchandising practices.

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Section A. Section 407.025, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.025, to read as follows: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 for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages.

2. A person seeking to recover damages shall establish:

(1) That the person acted as a reasonable consumer would in light of all circumstances;

(2) That the method, act, or practice declared unlawful by section 407.020 caused the person to enter into the transaction that resulted in damages; and

(3) Individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty.

A court may dismiss a claim as a matter of law where the claim fails to show a likelihood that the method, act, or practice alleged to be unlawful would mislead a reasonable consumer.

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

20 **3. Damages shall be measured by the person's out-of-pocket loss,**
21 **which shall be defined as an amount of money equal to the difference**
22 **between the amount paid by the person for the good or service and the**
23 **actual market value of the good or service that the person actually**
24 **received.**

25 4. The court may, in its discretion[,]:

26 (1) Award punitive damages [and may];

27 (2) Award to the prevailing party attorney's fees, based on the amount of
28 time reasonably expended[,]; and [may]

29 (3) Provide such [equitable] **injunctive** relief as it deems necessary or
30 proper **to protect the prevailing party from the methods, acts, or**
31 **practices declared unlawful by section 407.020.**

32 **5. No action may be brought under this section to recover**
33 **damages for personal injury or death.**

34 **6. A cause of action under this section accrues on the date of**
35 **purchase or lease described in subsection 1 of this section.**

36 [2.] 7. Persons entitled to bring an action pursuant to subsection 1 of this
37 section may, if the unlawful method, act or practice has caused similar injury to
38 numerous other persons, institute an action as representative or representatives
39 of a class against one or more defendants as representatives of a class, and the
40 petition shall allege such facts as will show that these persons or the named
41 defendants specifically named and served with process have been fairly chosen
42 and adequately and fairly represent the whole class, to recover damages as
43 provided for in subsection 1 of this section. The plaintiff shall be required to
44 prove such allegations, unless all of the members of the class have entered their
45 appearance, and it shall not be sufficient to prove such facts by the admission or
46 admissions of the defendants who have entered their appearance. In any action
47 brought pursuant to this section, the court may in its discretion order, in addition
48 to damages, injunction or other equitable relief and reasonable attorney's fees.

49 [3.] 8. An action may be maintained as a class action in a manner
50 consistent with Rule 23 of the Federal Rules of Civil Procedure and Missouri rule
51 of civil procedure 52.08 to the extent such state rule is not inconsistent with the
52 federal rule if:

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

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

55 (3) The claims or defenses of the representative parties are typical of the

56 claims or defenses of the class; and

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

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

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

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

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

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

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

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

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

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

84 [4.] 9. (1) As soon as practicable after the commencement of an action
85 brought as a class action, the court shall determine by order whether it is to be
86 so maintained. An order pursuant to this subdivision may be conditional, and
87 may be altered or amended before the decision on the merits.

88 (2) In any class action maintained pursuant to subdivision (7) of
89 subsection 3 of this section, the court shall direct to the members of the class the
90 best notice practicable under the circumstances, including individual notice to all
91 members who can be identified through reasonable effort. The notice shall advise

92 each member that:

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

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

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

99 (3) The judgment in an action maintained as a class action pursuant to
100 subdivision (5) of subsection 3 of this section or subdivision (6) of subsection 3 of
101 this section, whether or not favorable to the class, shall include and describe
102 those whom the court finds to be members of the class. The judgment in an
103 action maintained as a class action pursuant to subdivision (7) of subsection 3 of
104 this section, whether or not favorable to the class, shall include and specify or
105 describe those to whom the notice provided in subdivision (2) of this subsection
106 was directed, and who have requested exclusion, and whom the court finds to be
107 members of the class.

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

112 **[5.] 10.** In the conduct of actions to which this section applies, the court
113 may make appropriate orders:

114 (1) Determining the course of proceedings or prescribing measures to
115 prevent undue repetition or complication in the presentation of evidence or
116 argument;

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

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

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

127 (5) Dealing with similar procedural matters.

128 [6.] 11. A class action shall not be dismissed or compromised without the
129 approval of the court, and notice of the proposed dismissal or compromise shall
130 be given to all members of the class in such manner as the court directs.

131 [7.] 12. Upon commencement of any action brought pursuant to
132 subsection 1 of this section, the plaintiff or plaintiffs shall inform the clerk of the
133 court in which such action is brought, on forms to be provided by such clerk, that
134 the action is brought pursuant to this section. The clerk of the court shall
135 forthwith inform the attorney general of the commencement of such action,
136 together with a copy of the complaint or other initial pleading, and, upon entry
137 of any judgment or decree in the action, the clerk shall mail a copy of such
138 judgment or decree to the attorney general.

139 [8.] 13. Any permanent injunction, judgment or order of the court made
140 pursuant to section 407.100 shall be prima facie evidence in an action brought
141 pursuant to this section that the respondent used or employed a method, act or
142 practice declared unlawful by section 407.020.

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Bill

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