

FIRST REGULAR SESSION

SENATE BILL NO. 374

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time February 12, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1902S.011

AN ACT

To repeal section 407.020, RSMo, and to enact in lieu thereof one new section relating to unlawful merchandising practices, with existing penalty provisions.

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

Section A. Section 407.020, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 407.020, 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
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

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

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.

✓

Bill

Copy