

FIRST REGULAR SESSION

# SENATE BILL NO. 62

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0710S.011

## AN ACT

To repeal section 407.025, RSMo, and to enact in lieu thereof three new sections relating to civil actions.

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

Section A. Section 407.025, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 407.025, 407.026, and 407.027, to read as follows: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. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

[2. Persons entitled to bring an action pursuant to subsection 1 of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons, institute an action as representative or representatives of a class against one or more defendants as representatives of a class, and the petition shall allege such facts as will show that these persons or the named defendants specifically named and served with process have been fairly chosen and adequately and fairly represent the whole class, to recover damages as provided for in subsection 1 of this section. The plaintiff shall be required to

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

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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