

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/HCS/House Bill No. 1682, Page 1, Section title, Line 6,

2 of the title, by inserting after "RSMo," the following: "and
3 section 407.025 as truly agreed to and finally passed by the
4 second regular session of the one hundredth general assembly in
5 senate substitute no. 2 for senate committee substitute for
6 senate bill no. 591"; and

7 Further amend said bill, Page 2, Section 9.182, Line 18, by
8 inserting after all of said line the following:

9 "44.045. 1. Subject to approval by the state emergency
10 management agency during an emergency declared by the governor,
11 any health care provider licensed, registered, or certified in
12 this state or any state who agrees to be so deployed as provided
13 in this section may be deployed to provide care as necessitated
14 by the emergency, including care necessitated by mutual aid
15 agreements between political subdivisions and other public and
16 private entities under section 44.090. During an emergency
17 declared by the governor, health care providers deployed by the
18 governor or any state agency shall not be liable for any civil
19 damages or administrative sanctions for any failure, in the
20 delivery of health care necessitated by the emergency during
21 deployment, to exercise the skill and learning of an ordinarily
22 careful health care provider in similar circumstances, but shall
23 be liable for damages due to willful and wanton acts or omissions

1 in rendering such care.

2 2. In a declared state of emergency, the department of
3 health and senior services and the division of professional
4 registration within the department of commerce and insurance may
5 release otherwise confidential contact and licensure,
6 registration, or certification information relating to health
7 care professionals to state, local, and private agencies to
8 facilitate deployment.

9 3. (1) The limitations on liability for civil damages
10 provided in subsection 1 of this section shall apply to all
11 health care providers whether or not under an official deployment
12 if such health care is rendered in connection with a COVID-19
13 pandemic. Such limitations on liability for civil damages shall
14 only apply to acts or omissions that occur during the period of
15 time in which the governor has declared a state of emergency due
16 to COVID-19. The limitations on liability in this subsection
17 shall not extend to medical treatments or procedures, facility
18 operations, or other services performed that were not related to
19 COVID-19.

20 (2) For purposes of this subsection, "COVID-19" means the
21 severe acute respiratory syndrome coronavirus 2.

22 (3) For the purposes of this subsection, "health care
23 provider" shall include:

24 (a) Any physician, hospital, health maintenance
25 organization, ambulatory surgical center, long-term care facility
26 including those licensed under chapter 198, dentist, registered
27 or licensed practical nurse, optometrist, podiatrist, pharmacist,
28 chiropractor, professional physical therapist, psychologist,
29 physician-in-training, and any other person or entity that

1 provides health care services under the authority of a license or
2 certificate, and the employer or agent of such person or entity;

3 (b) Any individual, health care system, or other entity
4 that provides, refers, coordinates, consults upon, or arranges
5 for the delivery of health care services; and

6 (c) Any individual permitted to provide health care
7 services in the state due to a declared public health
8 emergency."; and

9 Further amend said bill, page 70, section 376.1578, line 18
10 of said page, by inserting immediately after said line the
11 following:

12 "407.025. 1. (1) Any person who purchases or leases
13 merchandise primarily for personal, family or household purposes
14 and thereby suffers an ascertainable loss of money or property,
15 real or personal, as a result of the use or employment by another
16 person of a method, act or practice declared unlawful by section
17 407.020, may bring a private civil action in either the circuit
18 court of the county in which the seller or lessor resides or in
19 which the transaction complained of took place, to recover actual
20 damages.

21 (2) A person seeking to recover damages shall establish:

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

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

27
28 A court may dismiss a claim as a matter of law where the claim
29 fails to show a likelihood that the method, act, or practice

1 alleged to be unlawful would mislead a reasonable consumer.

2 2. The court may, in its discretion[,]:

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

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

6 (3) Provide such equitable relief as it deems necessary or
7 proper to protect the prevailing party from the methods, acts, or
8 practices declared unlawful by section 407.020.

9 3. No action may be brought under this section to recover
10 damages for personal injury or death in which a claim can be made
11 under chapter 538.

12 4. A cause of action under this section accrues on the date
13 of purchase or lease described in subsection 1 of this section or
14 upon receipt of notice of a method, act, or practice declared
15 unlawful by section 407.020.

16 [2.] 5. Persons entitled to bring an action pursuant to
17 subsection 1 of this section may, if the unlawful method, act or
18 practice has caused similar injury to numerous other persons,
19 institute an action as representative or representatives of a
20 class against one or more defendants as representatives of a
21 class, and the petition shall allege such facts as will show that
22 these persons or the named defendants specifically named and
23 served with process have been fairly chosen and adequately and
24 fairly represent the whole class, to recover damages as provided
25 for in subsection 1 of this section. The plaintiff shall be
26 required to prove such allegations, unless all of the members of
27 the class have entered their appearance, and it shall not be
28 sufficient to prove such facts by the admission or admissions of
29 the defendants who have entered their appearance. The class

1 representative or representatives shall establish:

2 (1) That the representative or representatives acted as a
3 reasonable consumer would in light of all circumstances; and

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

7
8 All other members of the class shall establish individual damages
9 in a manner determined by the court. In any action brought
10 pursuant to this section, the court may in its discretion order,
11 in addition to damages, injunction or other equitable relief and
12 reasonable attorney's fees. Attorney's fees, if awarded, shall
13 bear a reasonable relationship to the amount of the judgment.
14 When the judgment grants equitable relief, the attorney's fees
15 shall be based on the amount of time reasonably expended.

16 **[3.]** 6. An action may be maintained as a class action in a
17 manner consistent with Rule 23 of the Federal Rules of Civil
18 Procedure and Missouri rule of civil procedure 52.08 to the
19 extent such state rule is not inconsistent with the federal rule
20 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
25 are typical of the claims or defenses of the class; and

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

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

1 (a) Inconsistent or varying adjudications with respect to
2 individual members of the class which would establish
3 incompatible standards of conduct for the party opposing the
4 class; or

5 (b) Adjudications with respect to individual members of the
6 class which would as a practical matter be dispositive of the
7 interests of the other members not parties to the adjudications
8 or substantially impair or impede their ability to protect their
9 interests; or

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

14 (7) The court finds that the questions of law or fact
15 common to the members of the class predominate over any questions
16 affecting only individual members, and that a class action is
17 superior to other available methods for the fair and efficient
18 adjudication of the controversy. The matters pertinent to the
19 findings include:

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

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

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

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

28 [4.] 7. (1) As soon as practicable after the commencement
29 of an action brought as a class action, the court shall determine

1 by order whether it is to be so maintained. An order pursuant to
2 this subdivision may be conditional, and may be altered or
3 amended before the decision on the merits.

4 (2) In any class action maintained pursuant to subdivision
5 (7) of subsection [3] 6 of this section, the court shall direct
6 to the members of the class the best notice practicable under the
7 circumstances, including individual notice to all members who can
8 be identified through reasonable effort. The notice shall advise
9 each member that:

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

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

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

17 (3) The judgment in an action maintained as a class action
18 pursuant to subdivision (5) of subsection [3] 6 of this section
19 or subdivision (6) of subsection [3] 6 of this section, whether
20 or not favorable to the class, shall include and describe those
21 whom the court finds to be members of the class. The judgment in
22 an action maintained as a class action pursuant to subdivision
23 (7) of subsection [3] 6 of this section, whether or not favorable
24 to the class, shall include and specify or describe those to whom
25 the notice provided in subdivision (2) of this subsection was
26 directed, and who have requested exclusion, and whom the court
27 finds to be members of the class.

28 (4) When appropriate an action may be brought or maintained
29 as a class action with respect to particular issues, or a class

1 may be divided into subclasses and each subclass treated as a
2 class, and the provisions of this section shall then be construed
3 and applied accordingly.

4 [5.] 8. In the conduct of actions to which this section
5 applies, the court may make appropriate orders:

6 (1) Determining the course of proceedings or prescribing
7 measures to prevent undue repetition or complication in the
8 presentation of evidence or argument;

9 (2) Requiring, for the protection of the members of the
10 class or otherwise for the fair conduct of the action, that
11 notice be given in such manner as the court may direct to some or
12 all of the members of any step in the action, or of the proposed
13 extent of the judgment, or of the opportunity of members to
14 signify whether they consider the representation fair and
15 adequate, to intervene and present claims or defenses, or
16 otherwise to come into the action;

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

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

22 (5) Dealing with similar procedural matters.

23 [6.] 9. A class action shall not be dismissed or
24 compromised without the approval of the court, and notice of the
25 proposed dismissal or compromise shall be given to all members of
26 the class in such manner as the court directs.

27 [7.] 10. Upon commencement of any action brought pursuant
28 to subsection 1 of this section, the plaintiff or plaintiffs
29 shall inform the clerk of the court in which such action is

1 brought, on forms to be provided by such clerk, that the action
2 is brought pursuant to this section. The clerk of the court
3 shall forthwith inform the attorney general of the commencement
4 of such action, together with a copy of the complaint or other
5 initial pleading, and, upon entry of any judgment or decree in
6 the action, the clerk shall mail a copy of such judgment or
7 decree to the attorney general.

8 [8.] 11. Any permanent injunction, judgment or order of
9 the court made pursuant to section 407.100 shall be prima facie
10 evidence in an action brought pursuant to this section that the
11 respondent used or employed a method, act or practice declared
12 unlawful by section 407.020.

13 [407.025. 1. (1) Any person who purchases or
14 leases merchandise primarily for personal, family or
15 household purposes and thereby suffers an ascertainable
16 loss of money or property, real or personal, as a
17 result of the use or employment by another person of a
18 method, act or practice declared unlawful by section
19 407.020, may bring a private civil action in either the
20 circuit court of the county in which the seller or
21 lessor resides or in which the transaction complained
22 of took place, to recover actual damages.

23 (2) A person seeking to recover damages shall
24 establish:

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

27 (b) That the method, act, or practice declared
28 unlawful by section 407.020 would cause a reasonable
29 person to enter into the transaction that resulted in
30 damages; and

31 (c) Individual damages with sufficiently
32 definitive and objective evidence to allow the loss to
33 be calculated with a reasonable degree of certainty.
34 A court may dismiss a claim as a matter of law where
35 the claim fails to show a likelihood that the method,
36 act, or practice alleged to be unlawful would mislead a
37 reasonable consumer.

38 2. The court may, in its discretion[,];

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

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

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2 necessary or proper to protect the prevailing party
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7 claim can be made under chapter 538.

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14 pursuant to subsection 1 of this section may, if the
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16 injury to numerous other persons, institute an action
17 as representative or representatives of a class against
18 one or more defendants as representatives of a class,
19 and the petition shall allege such facts as will show
20 that these persons or the named defendants specifically
21 named and served with process have been fairly chosen
22 and adequately and fairly represent the whole class, to
23 recover damages as provided for in subsection 1 of this
24 section. The plaintiff shall be required to prove such
25 allegations, unless all of the members of the class
26 have entered their appearance, and it shall not be
27 sufficient to prove such facts by the admission or
28 admissions of the defendants who have entered their
29 appearance. The class representative or
30 representatives shall establish:

31 (1) That the representative or representatives
32 acted as a reasonable consumer would in light of all
33 circumstances;

34 (2) That the method, act, or practice declared
35 unlawful by section 407.020 would cause a reasonable
36 person to enter into the transaction that resulted in
37 damages; and

38 (3) Individual damages with sufficiently
39 definitive and objective evidence to allow the loss to
40 be calculated with a reasonable degree of certainty.
41 All other members of the class shall establish
42 individual damages in a manner determined by the court.
43 In any action brought pursuant to this section, the
44 court may in its discretion order, in addition to
45 damages, injunction or other equitable relief and
46 reasonable attorney's fees. Attorney's fees, if
47 awarded, shall bear a reasonable relationship to the
48 amount of the judgment. When the judgment grants
49 equitable relief, the attorney's fees shall be based on
50 the amount of time reasonably expended.

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52 action in a manner consistent with Rule 23 of the

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7 the class;

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9 parties are typical of the claims or defenses of the
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23 be dispositive of the interests of the other members
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27 (6) The party opposing the class has acted or
28 refused to act on grounds generally applicable to the
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40 individually controlling the prosecution or defense of
41 separate actions;

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43 concerning the controversy already commenced by or
44 against members of the class;

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46 concentrating the litigation of the claims in the
47 particular forum;

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49 the management of a class action.

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6 the court shall direct to the members of the class the
7 best notice practicable under the circumstances,
8 including individual notice to all members who can be
9 identified through reasonable effort. The notice shall
10 advise each member that:

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

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

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

18 (3) The judgment in an action maintained as a
19 class action pursuant to subdivision (5) of subsection
20 [3] 6 of this section or subdivision (6) of subsection
21 [3] 6 of this section, whether or not favorable to the
22 class, shall include and describe those whom the court
23 finds to be members of the class. The judgment in an
24 action maintained as a class action pursuant to
25 subdivision (7) of subsection [3] 6 of this section,
26 whether or not favorable to the class, shall include
27 and specify or describe those to whom the notice
28 provided in subdivision (2) of this subsection was
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40 prescribing measures to prevent undue repetition or
41 complication in the presentation of evidence or
42 argument;

43 (2) Requiring, for the protection of the members
44 of the class or otherwise for the fair conduct of the
45 action, that notice be given in such manner as the
46 court may direct to some or all of the members of any
47 step in the action, or of the proposed extent of the
48 judgment, or of the opportunity of members to signify
49 whether they consider the representation fair and
50 adequate, to intervene and present claims or defenses,
51 or otherwise to come into the action;

52 (3) Imposing conditions on the representative

1 parties or on intervenors;

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

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7 [6.] 9. A class action shall not be dismissed or
8 compromised without the approval of the court, and
9 notice of the proposed dismissal or compromise shall be
10 given to all members of the class in such manner as the
11 court directs.

12 [7.] 10. Upon commencement of any action brought
13 pursuant to subsection 1 of this section, the plaintiff
14 or plaintiffs shall inform the clerk of the court in
15 which such action is brought, on forms to be provided
16 by such clerk, that the action is brought pursuant to
17 this section. The clerk of the court shall forthwith
18 inform the attorney general of the commencement of such
19 action, together with a copy of the complaint or other
20 initial pleading, and, upon entry of any judgment or
21 decree in the action, the clerk shall mail a copy of
22 such judgment or decree to the attorney general.

23 [8.] 11. Any permanent injunction, judgment or
24 order of the court made pursuant to section 407.100
25 shall be prima facie evidence in an action brought
26 pursuant to this section that the respondent used or
27 employed a method, act or practice declared unlawful by
28 section 407.020.]; and

29 Further amend the title and enacting clause accordingly.

30