An Act

To repeal sections 407.020, 407.025, 510.263, 510.265, 538.205, and 538.210, RSMo, and to enact in lieu thereof eight 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Section A. Sections 407.020, 407.025, 510.263, 510.265, 538.205, and 538.210, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.020, 407.025, 510.261, 510.263, 510.265, 538.205, 538.210, and 1, to read as follows:

407.020. 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

2. Nothing contained in this section shall apply to:

   (1) The owner or publisher of any newspaper, magazine, publication or printed matter wherein such advertisement appears, or the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; [or]

   (2) Any institution, company, or entity that is subject to chartering, licensing, or regulation by the director of the department of commerce and insurance under chapter 354 or chapters 374 to 385, the director of the division of credit unions under chapter 370, or director of the division of finance under chapters 361 to 369, or chapter 371, unless such directors specifically authorize the attorney general to implement the powers of this chapter or such powers are provided to either the attorney general or a private citizen by statute; or

   (3) Any advertisement, merchandise, or transaction in which the merchandise consists of a new residence in a transaction in which the buyer is offered and accepts in the sale contract an express warranty by the builder or through a third party warranty company paid for by the builder and the sale contract contains substantially the following disclaimer in all capital letters with characters of at least ten-point type: "THIS CONTRACT, MERCHANDISE AND PROPERTY CONVEYED UNDER THIS CONTRACT AND THE TRANSACTION BETWEEN THE SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER THE MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO 407.130, RSMO.". As used in this section, the term "residence" shall mean a single-family house, duplex, triplex, quadruplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system and shall include common areas and common elements as defined in subdivision (4) of section 448.1-103.

3. Any person who willfully and knowingly engages in any act, use, employment or practice declared to be unlawful by this section with the intent to defraud shall be guilty of a class E felony.

4. It shall be the duty of each prosecuting attorney and circuit attorney
in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.

5. It shall be an unlawful practice for any long-term care facility, as defined in section 192.2300, except a facility which is a residential care facility or an assisted living facility, as defined in section 198.006, which makes, either orally or in writing, representation to residents, prospective residents, their families or representatives regarding the quality of care provided, or systems or methods utilized for assurance or maintenance of standards of care to refuse to provide copies of documents which reflect the facility’s evaluation of the quality of care, except that the facility may remove information that would allow identification of any resident. If the facility is requested to provide any copies, a reasonable amount, as established by departmental rule, may be charged.

6. Any long-term care facility, as defined in section 192.2300, which commits an unlawful practice under this section shall be liable for damages in a civil action of up to one thousand dollars for each violation, and attorney’s fees and costs incurred by a prevailing plaintiff, as allowed by the circuit court.

407.025. 1. (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:

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

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

(c) 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.

2. The court may, in its discretion:
   (1) Award punitive damages [and may];
   (2) Award to the prevailing party attorney's fees, based on the amount of
time reasonably expended[.]; and [may]
   (3) Provide such equitable relief as it deems necessary or proper to
   protect the prevailing party from the methods, acts, or practices
declared unlawful by section 407.020.

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

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

5. 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
prove such allegations, unless all of the members of the class have entered their
appearance, and it shall not be sufficient to prove such facts by the admission or
admissions of the defendants who have entered their appearance. The class
representative or representatives shall establish:
   (1) That the representative or representatives acted as a
   reasonable consumer would in light of all circumstances;
   (2) That the method, act, or practice declared unlawful by
   section 407.020 would cause a reasonable 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.

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

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

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class; and, in addition
5. The prosecution of separate action by or against individual members of the class would create a risk of:
   a. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
   b. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
6. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
7. The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

a. The interest of members of the class in individually controlling the prosecution or defense of separate actions;
   b. The extent and nature of any litigation concerning the controversy
already commenced by or against members of the class;
(c) The desirability or undesirability of concentrating the litigation of the
claims in the particular forum;
(d) The difficulties likely to be encountered in the management of a class
action.

4. (1) As soon as practicable after the commencement of an action
brought as a class action, the court shall determine by order whether it is to be
so maintained. An order pursuant to this subdivision may be conditional, and
may be altered or amended before the decision on the merits.
(2) In any class action maintained pursuant to subdivision (7) of
subsection [3] 6 of this section, the court shall direct to the members of the class
the best notice practicable under the circumstances, including individual notice
to all members who can be identified through reasonable effort. The notice shall
advise each member that:
(a) The court will exclude such member from the class if such member so
requests by a specified date;
(b) The judgment, whether favorable or not, will include all members who
do not request exclusion; and
(c) Any member who does request exclusion may, if such member desires,
enter an appearance through such member's counsel.
(3) The judgment in an action maintained as a class action pursuant to
subdivision (5) of subsection [3] 6 of this section or subdivision (6) of subsection
[3] 6 of this section, whether or not favorable to the class, shall include and
describe those whom the court finds to be members of the class. The judgment
in an action maintained as a class action pursuant to subdivision (7) of subsection
[3] 6 of this section, whether or not favorable to the class, shall include and
specify or describe those to whom the notice provided in subdivision (2) of this
subsection was directed, and who have requested exclusion, and whom the court
finds to be members of the class.
(4) When appropriate an action may be brought or maintained as a class
action with respect to particular issues, or a class may be divided into subclasses
and each subclass treated as a class, and the provisions of this section shall then
be construed and applied accordingly.
5. (1) Determining the course of proceedings or prescribing measures to
prevent undue repetition or complication in the presentation of evidence or argument;

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

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

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

(5) Dealing with similar procedural matters.

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

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

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

510.261. 1. Except as otherwise provided by statute, punitive damages shall not be awarded unless the claimant proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others.

2. Punitive damages may only be recovered if the trier of fact awards more than nominal damages or if the claim or claims for which nominal damages are solely awarded invoke privacy rights, property
rights, or rights protected by the Constitution of the United States or
the Constitution of the state of Missouri.

3. Punitive damages can properly be awarded against an
employer or other principal because of an act by an agent if, but only
if:

(1) The principal or a managerial agent of the principal
authorized the doing and the manner of the act;
(2) The agent was unfit and the principal or a managerial agent
of the principal was reckless in employing or retaining him or her;
(3) The agent was employed in a managerial capacity and was
acting in the scope of employment; or
(4) The principal or a managerial agent of the principal ratified
or approved the act.

4. When an employer admits liability for the actions of an agent
in a claim for compensatory damages, the court shall grant limited
discovery consisting only of employment records and documents or
information related to the agent's qualifications.

5. No initial pleading in a civil action shall contain a claim for
a punitive damage award. Any later pleading containing a claim for a
punitive damage award may be filed only with leave of the court. A
trial court may grant leave to file such a pleading only on written
motion by the claimant, filed no later than one hundred twenty days
prior to the final pretrial conference in the case or, if there is no
scheduled pretrial conference, one hundred twenty days prior to the
date set for trial, that is supported by affidavits, exhibits, or discovery
materials establishing a reasonable basis for recovery of punitive
damages. Any party opposing leave may file affidavits, exhibits, or
discovery materials demonstrating that the standards for a punitive
damage award pursuant to this section have not been established. If
the trial court concludes, following its review of all materials submitted
in connection with the motion, that based on the evidence to be
admitted at trial a trier of fact could reasonably conclude, based on
clear and convincing evidence, that the standards for a punitive
damage award contained in this section have been met, the court shall
grant leave to file the pleading seeking a punitive damage award. The
court shall rule on a motion for leave to file a pleading seeking punitive
damages no later than forty-five days after a hearing on the motion or,
if no hearing is held on the motion, after the party opposing the motion has filed its response to the motion. The responsive pleading shall be limited to responding to the newly amended punitive damages claim.

6. The amount of punitive damages shall not be based, in whole or in part, on harm to nonparties.

7. No judgment that includes a punitive damage award shall be entered in any civil action in any court of this state, or in any court in which claims are asserted based on the constitution, statutes, or common law of this state, unless the requirements and procedures for a punitive damage award contained in this section and sections 510.263 and 537.675 are met.

8. Except to the extent that they are expressly inconsistent with this section, all common law limitations on punitive damages and all limitations on the recovery of punitive damages contained in other sections of the laws of this state remain in full force and effect.

9. As used in this section, the term "punitive damage award" means an award for punitive or exemplary damages or an award for aggravating circumstances.

510.263. 1. All actions tried before a jury involving punitive damages, including tort actions based upon improper health care, shall be conducted in a bifurcated trial before the same jury if requested by any party.

2. In the first stage of a bifurcated trial, in which the issue of punitive damages is submissible, the jury shall determine liability for compensatory damages, the amount of compensatory damages, including nominal damages, and the liability of a defendant for punitive damages. Evidence of defendant's financial condition shall not be admissible in the first stage of such trial unless admissible for a proper purpose other than the amount of punitive damages.

3. If during the first stage of a bifurcated trial the jury determines that a defendant is liable for punitive damages, that jury shall determine, in a second stage of trial, the amount of punitive damages to be awarded against such defendant. Evidence of such defendant's net worth shall be admissible during the second stage of such trial.

4. Within the time for filing a motion for new trial, a defendant may file a post-trial motion requesting the amount awarded by the jury as punitive damages be credited by the court with amounts previously paid in any state or federal court by the defendant for punitive damages arising out of the same
conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a credit shall be on the defendant and either party may introduce relevant evidence on such motion. Such a motion shall be determined by the trial court within the time and according to procedures applicable to motions for new trial. If the trial court sustains such a motion the trial court shall credit the jury award of punitive damages by the amount found by the trial court to have been previously paid by the defendant arising out of the same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to a credit under the provisions of this section, or the trial court finds from the evidence that the defendant’s conduct out of which the prior punitive [damages] damage award arose was not the same conduct on which the imposition of punitive damages is based in the pending action, or the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial court finds that the laws regarding punitive damages in the state or federal court in which the prior award of punitive damages was entered substantially and materially deviate from the law of the state of Missouri, except with respect to section 537.675, and that the nature of such deviation provides good cause for disallowance of the credit based on the public policy of Missouri, then the trial court may disallow all or any part of the credit provided by this section.

5. The credit allowable under this section shall not apply to causes of action for libel, slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or fraud.

6. The doctrines of remittitur and additur, based on the trial judge's assessment of the totality of the surrounding circumstances, shall apply to punitive damage awards.

7. As used in this section, "punitive damage award" means an award for punitive or exemplary damages or an award for aggravating circumstances.

8. Discovery as to a defendant’s assets shall be allowed only after a [finding by the trial court that it is more likely than not that the plaintiff will be able to present a submissible case to the trier of fact on the plaintiff’s claim of punitive damages] trial court has granted leave to file a pleading seeking punitive damages in accordance with subsection 5 of section 510.261.

510.265. 1. No award of punitive damages against any defendant shall exceed the greater of:
(1) Five hundred thousand dollars; or
(2) Five times the net amount of the judgment awarded to the plaintiff against the defendant.

Such limitations shall not apply if the state of Missouri is the plaintiff requesting the award of punitive damages, or the defendant pleads guilty to or is convicted of a felony arising out of the acts or omissions pled by the plaintiff.

2. The provisions of this section and sections 510.261 and 510.263 shall not apply to civil actions brought under section 213.111 that allege a violation of section 213.040, 213.045, 213.050, or 213.070, to the extent that the alleged violation of section 213.070 relates to or involves a violation of section 213.040, 213.045, or 213.050, or subdivision (3) of subsection 1 of section 213.070 as it relates to housing.

538.205. As used in sections 538.205 to 538.230, the following terms shall mean:

(1) "Catastrophic personal injury", a physical injury resulting in:
   (a) Quadriplegia defined as the permanent loss of functional use of all four limbs;
   (b) Paraplegia defined as the permanent loss of functional use of two limbs;
   (c) Loss of two or more limbs;
   (d) An injury to the brain that results in permanent cognitive impairment resulting in the permanent inability to make independent decisions or engage in one or more of the following activities of daily living: eating, dressing, bathing, toileting, transferring, and walking;
   (e) An injury that causes irreversible failure of one or more major organ systems; or
   (f) Vision loss such that the patient’s central visual acuity is no more than twenty/two-hundred in the better eye with the best correction or whose field of vision in the better eye is restricted to a degree that its widest diameter subtends an angle no greater than twenty degrees;

(2) "Economic damages", damages arising from pecuniary harm including, without limitation, medical damages, and those damages arising from lost wages and lost earning capacity;

(3) "Employee", any individual who is directly compensated by a health care provider for health care services rendered by such individual and other nonphysician individuals who are supplied to a health care provider by an entity
that provides staffing;

(4) "Equitable share", the share of a person or entity in an obligation that is the same percentage of the total obligation as the person's or entity's allocated share of the total fault, as found by the trier of fact;

(5) "Future damages", damages that the trier of fact finds will accrue after the damages findings are made;

(6) "Health care provider", any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility including those licensed under chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist, physician-in-training, and any other person or entity that provides health care services under the authority of a license or certificate;

(7) "Health care services", any services that a health care provider renders to a patient in the ordinary course of the health care provider's profession or, if the health care provider is an institution, in the ordinary course of furthering the purposes for which the institution is organized. Professional services shall include, but are not limited to, transfer to a patient of goods or services incidental or pursuant to the practice of the health care provider's profession or in furtherance of the purposes for which an institutional health care provider is organized;

(8) "Medical damages", damages arising from reasonable expenses for necessary drugs, therapy, and medical, surgical, nursing, x-ray, dental, custodial and other health and rehabilitative services;

(9) "Noneconomic damages", damages arising from nonpecuniary harm including, without limitation, pain, suffering, mental anguish, inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life, and loss of consortium but shall not include punitive damages;

(10) "Past damages", damages that have accrued when the damages findings are made;

(11) "Punitive damages", damages intended to punish or deter [willful, wanton or malicious misconduct] malicious misconduct or conduct that intentionally caused damage to the plaintiff, including exemplary damages and damages for aggravating circumstances;

(12) "Self-insurance", a formal or informal plan of self-insurance or no insurance of any kind.

538.210. 1. A statutory cause of action for damages against a health care
provider for personal injury or death arising out of the rendering of or failure to render health care services is hereby created, replacing any such common law cause of action. The elements of such cause of action are that the health care provider failed to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of the defendant’s profession and that such failure directly caused or contributed to cause the plaintiff’s injury or death.

2. (1) In any action against a health care provider for damages for personal injury arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than four hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, in any action against a health care provider for damages for a catastrophic personal injury arising out of the rendering or failure to render health care services, no plaintiff shall recover more than seven hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

(3) In any action against a health care provider for damages for death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than seven hundred thousand dollars for noneconomic damages irrespective of the number of defendants.

3. [(1)] This section shall also apply to any individual or entity, or their employees or agents[:]

(1) That provide, refer, coordinate, consult upon, or arrange for the delivery of health care services to the plaintiff; and

(2) Who is a defendant in a lawsuit brought against a health care provider under this chapter, or who is a defendant in any lawsuit that arises out of the rendering of or the failure to render health care services.

4. No health care provider whose liability is limited by the provisions of this chapter shall be liable to any plaintiff based on the actions or omissions of any other entity or individual who is not an employee of such health care provider, unless the individual is an employee of a subsidiary in which the health care provider has a controlling interest and the subsidiary does not carry a professional liability insurance policy or self-insurance covering said individual of at least one million dollars per occurrence and a professional liability insurance policy or self-insurance covering said subsidiary of at least one million dollars per occurrence.

5. The limitations on liability as provided for in this section shall apply
to all claims for contribution.

6. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, where the trier of fact is a jury, such jury shall not be instructed by the court with respect to the limitation on an award of noneconomic damages, nor shall counsel for any party or any person providing testimony during such proceeding in any way inform the jury or potential jurors of such limitation.

7. For purposes of sections 538.205 to 538.230, any spouse claiming damages for loss of consortium of their spouse shall be considered to be the same plaintiff as their spouse.

8. Any provision of law or court rule to the contrary notwithstanding, an award of punitive damages against a health care provider governed by the provisions of sections 538.205 to 538.230 shall be made only upon a showing by a plaintiff finding by the jury that the evidence clearly and convincingly demonstrated that the health care provider demonstrated willful, wanton or malicious misconduct with respect to his actions which are found to have injured or caused or contributed to cause the damages claimed in the petition intentionally caused damage to the plaintiff or demonstrated malicious misconduct that caused damage to the plaintiff. Evidence of negligence including, but not limited to, indifference to or conscious disregard for the safety of others shall not constitute intentional conduct or malicious misconduct.

9. For purposes of sections 538.205 to 538.230, all individuals and entities asserting a claim for a wrongful death under section 537.080 shall be considered to be one plaintiff.

10. The limitations on awards for noneconomic damages provided for in this section shall be increased by one and seven-tenths percent on an annual basis effective January first of each year. The current value of the limitation shall be calculated by the director of the department of commerce and insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register on the first business day following January first, but the value shall otherwise be exempt from the provisions of section 536.021.

11. In any claim for damages under this chapter, and upon post-trial motion following a jury verdict with noneconomic damages exceeding four hundred thousand dollars, the trial court shall determine whether the limitation in subsection 2 of this section shall apply based on the severity of the most severe
injuries.

12. If a court of competent jurisdiction enters a final judgment on the merits that is not subject to appeal and that declares any provision or part of either section 1.010 or this section to be unconstitutional or unenforceable, then section 1.010 and this section, as amended by this act and in their entirety, are invalid and shall have no legal effect as of the date of such judgment, and this act, including its repealing clause, shall likewise be invalid and of no legal effect. In such event, the versions of sections 1.010 and this section that were in effect prior to the enactment of this act shall remain in force.

Section 1. The provisions of this act shall apply to causes of action filed on or after August 28, 2020.