

SENATE BILL NO. 1773

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREGORY (21).

7485S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 407.020, RSMo, and to enact in lieu thereof one new section relating to unlawful merchandising practices, with 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Section A. Section 407.020, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 407.020,
3 to read as follows:

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

18 this subsection violates this subsection whether committed
19 before, during or after the sale, advertisement or
20 solicitation.

21 2. Nothing contained in this section shall apply to:

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

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

38 (3) Any advertisement, merchandise, or transaction in
39 which the merchandise consists of a new residence in a
40 transaction in which the buyer is offered and accepts in the
41 sale contract an express warranty by the builder or through
42 a third-party warranty company paid for by the builder and
43 the sale contract contains substantially the following
44 disclaimer in all capital letters with characters of at
45 least ten-point type: "THIS CONTRACT, MERCHANDISE AND
46 PROPERTY CONVEYED UNDER THIS CONTRACT AND THE TRANSACTION
47 BETWEEN THE SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER
48 THE MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO
49 407.130, RSMO.". As used in this section, the term

50 "residence" shall mean a single-family house, duplex,
51 triplex, quadruplex, or a unit in a multiunit residential
52 structure in which title to each individual unit is
53 transferred to the owner under a condominium or cooperative
54 system and shall include common areas and common elements as
55 defined in subdivision (4) of section 448.1-103.

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

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

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

80 6. Any long-term care facility, as defined in section
81 192.2300, which commits an unlawful practice under this

82 section shall be liable for damages in a civil action of up
83 to one thousand dollars for each violation, and attorney's
84 fees and costs incurred by a prevailing plaintiff, as
85 allowed by the circuit court.

86 **7. Unlawful practices under subsection 1 of this**
87 **section shall include, but shall not be limited to, any**
88 **violation of sections 149.200 to 149.215, sections 173.600**
89 **to 173.618, subsection 3 of section 196.1023, section**
90 **304.158, subsection 2 of section 376.414, subsection 11 of**
91 **section 376.1850, sections 407.660 to 407.664, sections**
92 **407.670 to 407.678, section 407.800, sections 407.1070 to**
93 **407.1085, sections 407.1120 to 407.1132, sections 436.400 to**
94 **436.520, subdivision (3) of subsection 4 of section 643.315,**
95 **section 700.076, and sections 700.010 to 700.115 except as**
96 **provided in subsections 2 and 3 of section 700.115.**

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