

FIRST REGULAR SESSION

HOUSE BILL NO. 890

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BYRD.

Read 1st time March 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2196L.011

AN ACT

To repeal section 407.025, RSMo, and to enact in lieu thereof one new section relating to class action lawsuits for unlawful merchandising practices.

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

Section A. Section 407.025, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.025, to read as follows: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 **only if there are a minimum of ten named plaintiffs in any such action**, 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] **plaintiffs** shall be required to prove such allegations, unless all of the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 members of the class have entered their appearance, and it shall not be sufficient to prove such
18 facts by the admission or admissions of the defendants who have entered their appearance. In
19 any action brought pursuant to this section, the court may in its discretion order, in addition to
20 damages, injunction or other equitable relief and reasonable attorney's fees.

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

24 (1) The class is so numerous that joinder of all members is impracticable;

25 (2) There are questions of law or fact common to the class;

26 (3) The claims or defenses of the representative parties are typical of the claims or
27 defenses of the class; and

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

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

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

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

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

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

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

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

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

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

51 4. (1) As soon as practicable after the commencement of an action brought as a class
52 action, the court shall determine by order whether it is to be so maintained. An order pursuant

53 to this subdivision may be conditional, and may be altered or amended before the decision on
54 the merits.

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

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

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

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

65 (3) The judgment in an action maintained as a class action pursuant to subdivision (5)
66 of subsection 3 of this section or subdivision (6) of subsection 3 of this section, whether or not
67 favorable to the class, shall include and describe those whom the court finds to be members of
68 the class. The judgment in an action maintained as a class action pursuant to subdivision (7) of
69 subsection 3 of this section, whether or not favorable to the class, shall include and specify or
70 describe those to whom the notice provided in subdivision (2) of this subsection was directed,
71 and who have requested exclusion, and whom the court finds to be members of the class.

72 (4) When appropriate an action may be brought or maintained as a class action with
73 respect to particular issues, or a class may be divided into subclasses and each subclass treated
74 as a class, and the provisions of this section shall then be construed and applied accordingly.

75 5. In the conduct of actions to which this section applies, the court may make appropriate
76 orders:

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

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

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

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

87 (5) Dealing with similar procedural matters.

88 6. A class action shall not be dismissed or compromised without the approval of the

89 court, and notice of the proposed dismissal or compromise shall be given to all members of the
90 class in such manner as the court directs.

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

98 8. Any permanent injunction, judgment or order of the court made pursuant to section
99 407.100 shall be prima facie evidence in an action brought pursuant to this section that the
100 respondent used or employed a method, act or practice declared unlawful by section 407.020.

101 **9. (1) If a proposed settlement in a class action brought under this section provides**
102 **for a recovery of coupons to a class member, the portion of any attorney's fee award to**
103 **class counsel that is attributable to the award of the coupons shall be based on the value**
104 **to class members of the coupons that are redeemed.**

105 **(2) (a) If a proposed settlement in a class action brought under this section**
106 **provides for a recovery of coupons to class members, and a portion of the recovery of the**
107 **coupons is not used to determine the attorney's fee to be paid to class counsel, any**
108 **attorney's fee award shall be based upon the amount of time class counsel reasonably**
109 **expended working on the action.**

110 **(b) Any attorney's fee under this subdivision shall be subject to approval by the**
111 **court and shall include an appropriate attorney's fee, if any, for obtaining equitable relief,**
112 **including an injunction, if applicable. Nothing in this subdivision shall be construed to**
113 **prohibit application of a lodestar with a multiplier method of determining attorney's fees.**

114 **(3) If a proposed settlement in a class action brought under this section provides**
115 **for an award of coupons to class members and also provides for equitable relief, including**
116 **injunctive relief:**

117 **(a) That portion of the attorney's fee to be paid to class counsel that is based upon**
118 **a portion of the recovery of the coupons shall be calculated in accordance with subdivision**
119 **(1) of this subsection; and**

120 **(b) That portion of the attorney's fee to be paid to class counsel that is not based**
121 **upon a portion of the recovery of the coupons shall be calculated in accordance with**
122 **subdivision (2) of this subsection.**

123 **(4) In a class action brought under this section involving the awarding of coupons,**
124 **the court may, in its discretion upon the motion of a party, receive expert testimony from**

125 a witness qualified to provide information on the actual value to the class members of the
126 coupons that are redeemed.

127 (5) In a proposed settlement under which class members would be awarded
128 coupons, the court may approve the proposed settlement only after a hearing to determine
129 whether, and making a written finding that, the settlement is fair, reasonable, and
130 adequate for class members. The court, in its discretion, may also require that a proposed
131 settlement agreement provide for the distribution of a portion of the value of unclaimed
132 coupons to one or more charitable or governmental organizations, as agreed to by the
133 parties. The distribution and redemption of any proceeds under this subdivision shall not
134 be used to calculate attorney's fees under this subsection.