

SECOND REGULAR SESSION

HOUSE BILL NO. 2089

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY.

5654H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 407.020, 407.025, 508.010, and 537.762, RSMo, and to enact in lieu thereof six new sections relating to civil actions.

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

Section A. Sections 407.020, 407.025, 508.010, and 537.762, RSMo, are repealed and
2 six new sections enacted in lieu thereof, to be known as sections 407.012, 407.020, 407.025,
3 508.010, 537.761, and 537.762, to read as follows:

**407.012. 1. In a civil action brought under section 407.025, absent a state statute
2 to the contrary, the courts shall be guided by the policies of the Federal Trade Commission
3 and interpretations given by the Federal Trade Commission and the federal courts to
4 Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. Section 45(a)(1), as
5 amended.**

**6 2. Section 407.025 shall not apply to actions or transactions otherwise permitted,
7 approved, or regulated by the Federal Trade Commission or any other regulatory agency
8 acting under statutory authority of this state or the United States.**

407.020. 1. The act, use or employment by any person of any deception, fraud, false
2 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or
3 omission of any material fact in connection with the sale or advertisement of any merchandise
4 in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in
5 section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use
6 by any person, in connection with the sale or advertisement of any merchandise in trade or
7 commerce or the solicitation of any funds for any charitable purpose, as defined in section
8 407.453, in or from the state of Missouri of the fact that the attorney general has approved any

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.

9 filing required by this chapter as the approval, sanction or endorsement of any activity, project
10 or action of such person, is declared to be an unlawful practice. Any act, use or employment
11 declared unlawful by this subsection violates this subsection whether committed before, during
12 or after the sale, advertisement or solicitation.

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

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

18 (2) Any institution, company, or entity that is subject to chartering, licensing, or
19 regulation by the director of the department of insurance, financial institutions and professional
20 registration under chapter 354 or chapters 374 to 385, the director of the division of credit unions
21 under chapter 370, or director of the division of finance under chapters 361 to 369, or chapter
22 371, unless such directors specifically authorize the attorney general to implement the powers
23 of this chapter or such powers are provided to either the attorney general or a private citizen by
24 statute; or

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

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

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

45 5. It shall be an unlawful practice for any long-term care facility, as defined in section
46 192.2300, except a facility which is a residential care facility or an assisted living facility, as
47 defined in section 198.006, which makes, either orally or in writing, representation to residents,
48 prospective residents, their families or representatives regarding the quality of care provided, or
49 systems or methods utilized for assurance or maintenance of standards of care to refuse to
50 provide copies of documents which reflect the facility's evaluation of the quality of care, except
51 that the facility may remove information that would allow identification of any resident. If the
52 facility is requested to provide any copies, a reasonable amount, as established by departmental
53 rule, may be charged.

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

 407.025. 1. Any person who purchases or leases merchandise primarily for personal,
2 family or household purposes and thereby suffers an ascertainable loss of money or property, real
3 or personal, as a result of the use or employment by another person of a method, act or practice
4 declared unlawful by section 407.020, may bring a private civil action in either the circuit court
5 of the county in which the seller or lessor resides or in which the transaction complained of took
6 place, to recover actual damages. **A person seeking to recover damages shall demonstrate**
7 **that he or she acted reasonably in light of all the circumstances and establish his or her**
8 **individual damages with sufficiently definitive and objective evidence to allow the loss to**
9 **be calculated with a reasonable degree of certainty. The damages shall be measured by the**
10 **person's out-of-pocket loss, which shall be defined as an amount of moneys equal to the**
11 **difference between the amount paid by the consumer for the good or service and the actual**
12 **market value of the good or service that the consumer actually received. In order to**
13 **recover damages under this section, each person shall be required to prove that the**
14 **method, act, or practice declared unlawful by section 407.020 caused him or her to enter**
15 **into the transaction that resulted in his or her damages.** The court may, in its discretion,
16 award punitive damages ~~and~~ . **The court may, in its discretion,** award to the prevailing party
17 attorney's fees, based on the amount of time reasonably expended, and may provide such
18 ~~[equitable]~~ **injunctive** relief as it deems necessary or proper **to protect the prevailing party**
19 **from the methods, acts, or practices declared unlawful by section 407.020. No action may**
20 **be brought under this section to recover damages for personal injury or death. A cause of**
21 **action under this section accrues on the date of the purchase or lease described in this**
22 **subsection.**

23 2. Persons entitled to bring an action pursuant to subsection 1 of this section may, if the
24 unlawful method, act or practice has caused similar injury to numerous other persons, institute
25 an action as representative or representatives of a class against one or more defendants as
26 representatives of a class, and the petition shall allege such facts as will show that these persons
27 or the named defendants specifically named and served with process have been fairly chosen and
28 adequately and fairly represent the whole class, to recover **compensatory but not punitive**
29 damages as provided for in subsection 1 of this section. The plaintiff shall be required to prove
30 such allegations, unless all of the members of the class have entered their appearance, and it shall
31 not be sufficient to prove such facts by the admission or admissions of the defendants who have
32 entered their appearance. **In order to recover damages in a class action under this section,**
33 **each class member shall be required to prove that his or her damages were proximately**
34 **caused by the method, act, or practice declared unlawful by section 407.020, and that the**
35 **method, act, or practice caused the class member to enter into the transaction that resulted**
36 **in his or her damages. The court shall not infer that damages proven to have been suffered**
37 **by one or more class members were suffered by all class members.** In any action brought
38 pursuant to this section, the court may in its discretion [~~order, in addition to damages, injunction~~
39 ~~or other equitable relief and~~] **enjoin the methods, acts, or practices declared unlawful by**
40 **section 407.020. The court may also determine a proposed award of reasonable attorney's**
41 **fees for the counsel to the class. Attorney's fees, if awarded, shall bear a reasonable**
42 **relationship to the amount of the judgment.**

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

- 46 (1) The class is so numerous that joinder of all members is impracticable;
47 (2) There are questions of law or fact common to the class;
48 (3) The claims or defenses of the representative parties are typical of the claims or
49 defenses of the class; and
50 (4) The representative parties will fairly and adequately protect the interests of the class;
51 and, in addition
52 (5) The prosecution of separate action by or against individual members of the class
53 would create a risk of:
54 (a) Inconsistent or varying adjudications with respect to individual members of the class
55 which would establish incompatible standards of conduct for the party opposing the class; or
56 (b) Adjudications with respect to individual members of the class which would as a
57 practical matter be dispositive of the interests of the other members not parties to the
58 adjudications or substantially impair or impede their ability to protect their interests; or

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

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

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

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

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

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

73 4. (1) As soon as practicable after the commencement of an action brought as a class
74 action, the court shall determine by order whether it is to be so maintained. An order pursuant
75 to this subdivision may be conditional, and may be altered or amended before the decision on
76 the merits. **An order permitting a class action shall specify how the class claims and any
77 issues affecting only individual members, raised by the claims or defenses asserted in the
78 pleadings, shall be tried in a manageable, time-efficient manner.**

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

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

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

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

89 (3) **Prior to an entry of a judgment against a defendant in an action maintained as
90 a class action under subsection 3 of this section, the court shall require each member of the
91 class claiming to be entitled to monetary relief to submit a statement in a form prescribed
92 by the court requesting a specific dollar amount and providing information regarding the
93 nature of his or her loss, injury, claim, or damage. No award of damages under this section
94 shall be made without objective proof that the person or persons seeking damages suffered**

95 **actual damages. No judgment shall be entered until the trier of fact has determined the**
96 **amount of moneys, if any, owed to each class member based upon his or her individual**
97 **proof. The amount of judgment shall not exceed the sum of the moneys owed to each class**
98 **member. The judgment shall identify each member of the class and his or her individual**
99 **monetary award.** The judgment in an action maintained as a class action pursuant to
100 subdivision (5) of subsection 3 of this section or subdivision (6) of subsection 3 of this section,
101 whether or not favorable to the class, shall include and describe those whom the court finds to
102 be members of the class. The judgment in an action maintained as a class action pursuant to
103 subdivision (7) of subsection 3 of this section, whether or not favorable to the class, shall include
104 and specify or describe those to whom the notice provided in subdivision (2) of this subsection
105 was directed, and who have requested exclusion, and whom the court finds to be members of the
106 class.

107 (4) When appropriate, **in a case that otherwise meets the class action requirements**
108 **of subsection 3 of this section,** an action may be brought or maintained as a class action with
109 respect to particular issues, or a class may be divided into subclasses and each subclass treated
110 as a class, and the provisions of this section shall then be construed and applied accordingly.

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

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

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

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

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

123 (5) Dealing with similar procedural matters.

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

127 7. Upon commencement of any action brought pursuant to subsection 1 of this section,
128 the plaintiff or plaintiffs shall inform the clerk of the court in which such action is brought, on
129 forms to be provided by such clerk, that the action is brought pursuant to this section. The clerk
130 of the court shall forthwith inform the attorney general of the commencement of such action,

131 together with a copy of the complaint or other initial pleading, and, upon entry of any judgment
132 or decree in the action, the clerk shall mail a copy of such judgment or decree to the attorney
133 general.

134 8. Any permanent injunction, judgment or order of the court made pursuant to section
135 407.100 shall be prima facie evidence in an action brought pursuant to this section that the
136 respondent used or employed a method, act or practice declared unlawful by section 407.020.

137 **9. In any suit seeking relief under this section or any suit for product liability, the**
138 **provisions of subsection 1 of section 507.040 shall not be satisfied if the plaintiffs' claims**
139 **are based on separate occurrences. Separate purchases of the same product or service and**
140 **separate injuries from the same product shall be considered separate occurrences for**
141 **purposes of this section.**

508.010. 1. As used in this section, "principal place of residence" shall mean the county
2 which is the main place where an individual resides in the state of Missouri. There shall be a
3 rebuttable presumption that the county of voter registration at the time of injury is the principal
4 place of residence. There shall be only one principal place of residence.

5 2. In all actions in which there is no count alleging a tort, venue shall be determined as
6 follows:

7 (1) When the defendant is a resident of the state, either in the county within which the
8 defendant resides, or in the county within which the plaintiff resides, and the defendant may be
9 found;

10 (2) When there are several defendants, and they reside in different counties, the suit may
11 be brought in any such county;

12 (3) When there are several defendants, some residents and others nonresidents of the
13 state, suit may be brought in any county in this state in which any defendant resides;

14 (4) When all the defendants are nonresidents of the state, suit may be brought in any
15 county in this state.

16 3. The term "tort" shall include claims based upon improper health care, under the
17 provisions of chapter 538.

18 4. Notwithstanding any other provision of law, in all actions in which there is any count
19 alleging a tort and in which the plaintiff was first injured in the state of Missouri, venue shall be
20 in the county where the plaintiff was first injured by the wrongful acts or negligent conduct
21 alleged in the action.

22 5. Notwithstanding any other provision of law, in all actions in which there is any count
23 alleging a tort and in which the plaintiff was first injured outside the state of Missouri, venue
24 shall be determined as follows:

25 (1) If the defendant is a corporation, then venue shall be in any county where a defendant
26 corporation's registered agent is located or, if the plaintiff's principal place of residence was in
27 the state of Missouri on the date the plaintiff was first injured, then venue may be in the county
28 of the plaintiff's principal place of residence on the date the plaintiff was first injured;

29 (2) If the defendant is an individual, then venue shall be in any county of the individual
30 defendant's principal place of residence in the state of Missouri or, if the plaintiff's principal
31 place of residence was in the state of Missouri on the date the plaintiff was first injured, then
32 venue may be in the county containing the plaintiff's principal place of residence on the date the
33 plaintiff was first injured;

34 (3) **In any case in which venue is not expressly prescribed by subdivision (1) or (2)**
35 **of this subsection, venue shall be in the county containing the seat of state government;**

36 (4) Notwithstanding subdivisions (1) and (2) of this subsection, if the plaintiff was first
37 injured in a foreign country in connection with any railroad operations therein and any defendant
38 is a:

39 (a) Corporation that, either directly or through its subsidiaries, wholly owns or operates
40 the foreign railroad; or

41 (b) Wholly owned subsidiary of a corporation that, either directly or through its
42 subsidiaries, wholly owns or operates the foreign railroad;

43

44 then venue shall exclusively be in the county where any such defendant corporation's registered
45 agent is located, regardless of venue as to any other defendant or, if the plaintiff's principal place
46 of residence was in the state of Missouri on the date the plaintiff was first injured, then venue
47 may be in the county of the plaintiff's principal place of residence on the date the plaintiff was
48 first injured.

49 6. Any action, in which any county shall be a plaintiff, may be commenced and
50 prosecuted to final judgment in the county in which the defendant or defendants reside, or in the
51 county suing and where the defendants, or one of them, may be found.

52 7. In all actions, process shall be issued by the court in which the action is filed and
53 process may be served in any county within the state.

54 8. In any action for defamation or for invasion of privacy, the plaintiff shall be
55 considered first injured in the county in which the defamation or invasion was first published.

56 9. In all actions, venue shall be determined as of the date the plaintiff was first injured.

57 10. All motions to dismiss or to transfer based upon a claim of improper venue shall be
58 deemed granted if not denied within ninety days of filing of the motion unless such time period
59 is waived in writing by all parties.

60 11. In a wrongful death action, the plaintiff shall be considered first injured where the
61 decedent was first injured by the wrongful acts or negligent conduct alleged in the action. In any
62 spouse's claim for loss of consortium, the plaintiff claiming consortium shall be considered first
63 injured where the other spouse was first injured by the wrongful acts or negligent conduct alleged
64 in the action.

65 12. The provisions of this section shall apply irrespective of whether the defendant is a
66 for-profit or a not-for-profit entity.

67 13. In any civil action, if all parties agree in writing to a change of venue, the court shall
68 transfer venue to the county within the state unanimously chosen by the parties. If any parties
69 are added to the cause of action after the date of said transfer who do not consent to said transfer
70 then the cause of action shall be transferred to such county in which venue is appropriate under
71 this section, based upon the amended pleadings.

72 14. A plaintiff is considered first injured where the trauma or exposure occurred rather
73 than where symptoms are first manifested.

**537.761. 1. In a products liability action in which a plaintiff alleges a design defect,
2 the burden is on the plaintiff to prove by a preponderance of the evidence that:**

3 **(1) There was a safer alternative design; and**

4 **(2) The defect was a proximate and producing cause of the personal injury,
5 property damage, or death for which the plaintiff seeks recovery.**

6 **2. As used in this section, "safer alternative design" means a product design other
7 than the one actually used that in reasonable probability:**

8 **(1) Would have prevented or significantly reduced the risk of the plaintiff's
9 personal injury, property damage, or death without substantially impairing the product's
10 utility; and**

11 **(2) Was economically and technologically feasible at the time the product left the
12 control of the manufacturer or seller by the application of existing or reasonably
13 achievable scientific knowledge.**

537.762. 1. A defendant whose liability is based solely on his status as a seller in the
2 stream of commerce may be dismissed from a products liability claim as provided in this section.

3 2. This section shall apply to any products liability claim in which another defendant,
4 including the manufacturer, is properly before the court and from whom total recovery may be
5 had for plaintiff's claim.

6 3. A defendant may move for dismissal under this section within the time for filing an
7 answer or other responsive pleading unless permitted by the court at a later time for good cause
8 shown. The motion shall be accompanied by an affidavit which shall be made under oath and

9 shall state that the defendant is aware of no facts or circumstances upon which a verdict might
10 be reached against him, other than his status as a seller in the stream of commerce.

11 4. The parties shall have sixty days in which to conduct discovery on the issues raised
12 in the motion and affidavit. The court for good cause shown, may extend the time for discovery,
13 and may enter a protective order pursuant to the rules of civil procedure regarding the scope of
14 discovery on other issues.

15 5. Any party may move for a hearing on a motion to dismiss under this section. If the
16 requirements of subsections 2 and 3 of this section are met, and no party comes forward at such
17 a hearing with evidence of facts which would render the defendant seeking dismissal under this
18 section liable on some basis other than his status as a seller in the stream of commerce, the court
19 shall dismiss without prejudice the claim as to that defendant.

20 6. ~~[No order of dismissal under this section shall operate to divest a court of venue or~~
21 ~~jurisdiction otherwise proper at the time the action was commenced. A defendant dismissed~~
22 ~~pursuant to this section shall be considered to remain a party to such action only for such~~
23 ~~purposes.~~

24 ~~7.]~~ An order of dismissal under this section shall be interlocutory until final disposition
25 of plaintiff's claim by settlement or judgment and may be set aside for good cause shown at
26 anytime prior to such disposition.

Section B. If any provision of sections 407.012, 407.020, 407.025, 508.010, 537.761,
2 and 537.762 or the application thereof to anyone or to any circumstance is held invalid, the
3 remainder of those sections and the application of such provisions to others or other
4 circumstances shall not be affected thereby.

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