

SECOND REGULAR SESSION

HOUSE BILL NO. 2243

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

4985H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 407.025, RSMo, and to enact in lieu thereof one new section relating to civil actions.

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Section A. Section 407.025, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.025, to read as follows: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.

2. A person seeking to recover damages shall establish:

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

(2) That the method, act, or practice declared unlawful by section 407.020 caused the 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.

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.

3. The court may, in its discretion[5]:

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.

- 18 (1) Award punitive damages ~~[and may]~~;
- 19 (2) Award to the prevailing party attorney's fees, based on the amount of time reasonably
20 expended~~[-]~~; and ~~[may]~~
- 21 (3) Provide such equitable relief as it deems necessary or proper **to protect the**
22 **prevailing party from the methods, acts, or practices declared unlawful by section 407.020.**
- 23 **4. No action may be brought under this section to recover damages for personal**
24 **injury or death.**
- 25 **5. A cause of action under this section accrues on the date of purchase or lease**
26 **described in subsection 1 of this section.**
- 27 ~~[2-]~~ 6. Persons entitled to bring an action pursuant to subsection 1 of this section may,
28 if the unlawful method, act or practice has caused similar injury to numerous other persons,
29 institute an action as representative or representatives of a class against one or more defendants
30 as representatives of a class, and the petition shall allege such facts as will show that these
31 persons or the named defendants specifically named and served with process have been fairly
32 chosen and adequately and fairly represent the whole class, to recover damages as provided for
33 in subsection 1 of this section. The plaintiff shall be required to prove such allegations, unless
34 all of the members of the class have entered their appearance, and it shall not be sufficient to
35 prove such facts by the admission or admissions of the defendants who have entered their
36 appearance. In any action brought pursuant to this section, the court may in its discretion order,
37 in addition to damages, injunction or other equitable relief and reasonable attorney's fees.
38 **Attorney's fees, if awarded, shall bear a reasonable relationship to the amount of the**
39 **judgment.**
- 40 ~~[3-]~~ 7. An action may be maintained as a class action in a manner consistent with Rule
41 23 of the Federal Rules of Civil Procedure and Missouri rule of civil procedure 52.08 to the
42 extent such state rule is not inconsistent with the federal rule if:
- 43 (1) The class is so numerous that joinder of all members is impracticable;
- 44 (2) There are questions of law or fact common to the class;
- 45 (3) The claims or defenses of the representative parties are typical of the claims or
46 defenses of the class; and
- 47 (4) The representative parties will fairly and adequately protect the interests of the class;
48 and, in addition
- 49 (5) The prosecution of separate action by or against individual members of the class
50 would create a risk of:
- 51 (a) Inconsistent or varying adjudications with respect to individual members of the class
52 which would establish incompatible standards of conduct for the party opposing the class; or

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

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

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

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

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

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

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

70 [4:] 8. (1) As soon as practicable after the commencement of an action brought as a
71 class action, the court shall determine by order whether it is to be so maintained. An order
72 pursuant to this subdivision may be conditional, and may be altered or amended before the
73 decision on the merits.

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

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

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

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

84 (3) The judgment in an action maintained as a class action pursuant to subdivision (5)
85 of subsection [3] 7 of this section or subdivision (6) of subsection [3] 7 of this section, whether
86 or not favorable to the class, shall include and describe those whom the court finds to be
87 members of the class. The judgment in an action maintained as a class action pursuant to
88 subdivision (7) of subsection [3] 7 of this section, whether or not favorable to the class, shall

89 include and specify or describe those to whom the notice provided in subdivision (2) of this
90 subsection was directed, and who have requested exclusion, and whom the court finds to be
91 members of the class.

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

95 ~~[5-]~~ **9.** In the conduct of actions to which this section applies, the court may make
96 appropriate orders:

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

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

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

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

107 (5) Dealing with similar procedural matters.

108 ~~[6-]~~ **10.** A class action shall not be dismissed or compromised without the approval of
109 the court, and notice of the proposed dismissal or compromise shall be given to all members of
110 the class in such manner as the court directs.

111 ~~[7-]~~ **11.** Upon commencement of any action brought pursuant to subsection 1 of this
112 section, the plaintiff or plaintiffs shall inform the clerk of the court in which such action is
113 brought, on forms to be provided by such clerk, that the action is brought pursuant to this section.
114 The clerk of the court shall forthwith inform the attorney general of the commencement of such
115 action, together with a copy of the complaint or other initial pleading, and, upon entry of any
116 judgment or decree in the action, the clerk shall mail a copy of such judgment or decree to the
117 attorney general.

118 ~~[8-]~~ **12.** Any permanent injunction, judgment or order of the court made pursuant to
119 section 407.100 shall be prima facie evidence in an action brought pursuant to this section that
120 the respondent used or employed a method, act or practice declared unlawful by section 407.020.

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