

SS#2 SCS SB 591 -- RELATING TO CIVIL ACTIONS

SPONSOR: White

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Regulatory Oversight and Reform by a vote of 5 to 2.

This bill modifies provisions relating to civil actions, including unlawful merchandising practices and punitive damages. The provisions of this bill shall apply to any cause of action filed on or after the effective date.

UNLAWFUL MERCHANDISING PRACTICES FOR NEW RESIDENCES

This bill provides that an unlawful merchandising practice shall not include 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 an express warranty in the sale contract by the builder or by a third party warranty paid for by the builder and the sale contract includes a disclaimer. The bill defines "residence" as a single-family house, duplex, triplex, quadruplex, or unit in a multiunit residential structure in which the title to each individual unit is transferred to an owner under a condominium or cooperative system and includes common areas and common elements (Section 407.020, RSMo).

This provision is similar to SCS SB 727 (2020), SB 762 (2020), a provision in HB 1872, SB 793 (2020), SB 374 (2019), a provision in SCS SB 62, in SCS SB 276, SCS SB 150, and HB 790 (2019).

PROCEDURE FOR UNLAWFUL MERCHANDISING PRACTICES CLAIMS

A person seeking to recover damages for unlawful merchandising practices shall establish that the person acted as a reasonable consumer, that the alleged unlawful act would cause a reasonable person to enter into the transaction that resulted in damages, and the 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 for failure to show a likelihood that the alleged unlawful act would mislead a reasonable consumer. In a class action, any class representative shall establish these requirements. All other members of the class shall establish individual damages in a manner determined by the court.

In addition to current damages available, a court may provide equitable relief as it deems necessary to protect the party from the unlawful acts. No action may be brought under these provisions to recover damages for personal injury or death in which a claim

arises out of the rendering of or failure to render health care services. Furthermore, this bill provides that any award of attorney's fees shall bear a reasonable relationship to the amount of the judgment. However, when the judgment grants equitable relief, the attorney's fees shall be based on the amount of time reasonably expended (Section 407.025).

These provisions are similar to SCS SB 727, HB 2243 (2020), provisions in SCS SB 276, in SCS HB 186, and HB 714 (2019).

PUNITIVE DAMAGES - GENERAL

This bill provides that punitive damages shall only be awarded if the plaintiff 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, and the plaintiff is awarded more than nominal damages. Punitive damages may be awarded against an employer due to an employee's conduct in certain situations, as provided in the bill. 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.

A claim for punitive damages shall not be contained in the initial pleading and may only be filed as a written motion with permission of the court no later than 120 days prior to the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. The amount of punitive damages shall not be based on harm to nonparties. A pleading seeking a punitive damage award may be filed only after the court determines that the trier of fact could reasonably conclude that the standards for a punitive damage award, as provided in the bill, have been met. The responsive pleading shall be limited to a response of the newly amended punitive damages claim.

Currently, if the defendant has previously paid punitive damages in another state for the same conduct, following a hearing, the court may credit the jury award of punitive damages by the amount previously paid. This bill provides that the defendant may also be credited for punitive damages paid in a federal court.

These provisions shall not apply to claims for unlawful housing practices under the Missouri Human Rights Act (Sections 510.261, 510.263, and 510.265).

These provisions are similar to provisions in SS SB 65, SCS HB 186, HB 489 (2019), SCS SB 1102, and HCS HB 2119 (2018).

PUNITIVE DAMAGES - MEDICAL MALPRACTICE

This bill modifies the definition of "punitive damages" as it relates to actions for damages against a health care provider for personal injury or death caused by the rendering of health care services.

In order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider intentionally caused damage or demonstrated malicious misconduct. Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute intentional conduct or malicious misconduct (Sections 538.205 and 538.210).

These provisions are similar to provisions in SS SB 65, SCS HB 186, HB 489 (2019), SCS SB 1102, HCS HB 2119, HCS HB 2434, and HB 2273 (2018).

PROPONENTS: Supporters say that this bill is necessary because the courts have reduced and watered down the current statutory restrictions on punitive damages. Supports testified that this bill is still balanced and fair. It does not eliminate punitive damages, it just ensures that they are only awarded in appropriate cases. Witnesses also testified that the merchandising practices act changes are narrowly tailored to only include those changes that are necessary.

Testifying for the bill were Senator White; American Property Casualty Insurance Association, Missouri Civil Justice Reform Coalition, Inc; Missouri Chamber of Commerce; American Tort Reform Association; The Doe Run Company; National Federation of Independent Business; Missouri Railroad Association; Bayer; Michael R. Gibbons, Enterprise Leasing of St. Louis LLC; US Chamber Institute for Legal Reform; National Association of Mutual Insurance Companies; United States Chamber of Commerce; and the Missouri Insurance Coalition.

Testifying against the bill were Andrew Robert Taylor; David Angle.