

FIRST REGULAR SESSION

HOUSE BILL NO. 790

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY.

1708H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Section 407.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.020, to read as follows:

407.020. 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

2. Nothing contained in this section shall apply to:

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

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 (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 or transaction of a new residence in which the buyer is**
26 **offered in the sale contract an express warranty by the builder, or through a third-party**
27 **warranty company paid for by the builder, and the sale contract contains substantially the**
28 **following disclaimer in all capital letters with characters of at least 10 point type: "THIS**
29 **CONTRACT, MERCHANDISE AND PROPERTY CONVEYED UNDER THIS**
30 **CONTRACT, AND THE TRANSACTION BETWEEN THE SELLER AND BUYER IS**
31 **EXCLUDED FROM COVERAGE UNDER THE MERCHANDISING PRACTICES ACT,**
32 **SECTIONS 407.010 TO 407.130, RSMo." As used in this subsection, the term "residence"**
33 **means a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit**
34 **residential structure in which title to each individual unit is transferred to the owner under**
35 **a condominium or cooperative system, and "residence" shall include common areas and**
36 **common elements as that term is defined under subdivision (4) of section 448.1-103.**

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

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

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

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

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