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Section A. Section 407.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.020, to read as follows: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

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

   (3) 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 in the sale contract an express warranty by the builder or through a third-party warranty company paid for by the builder and the sale contract contains substantially the following disclaimer in all capital letters with characters of at least ten-point type: "THIS CONTRACT, MERCHANDISE AND PROPERTY CONVEYED UNDER THIS CONTRACT AND THE TRANSACTION BETWEEN THE SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER THE MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO 407.130, RSMO.". As used in this section, the term "residence" shall mean a single-family house, duplex,
triplex, quadruplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system and shall include common areas and common elements as defined in subdivision (4) of section 448.1-103.

3. Any person who willfully and knowingly engages in any act, use, employment or practice declared to be unlawful by section 1, 5, or 6 of this section with the intent to defraud shall be guilty of a class E felony. Any person who willfully and knowingly engages in a practice declared to be unlawful by subsection 7 of this section shall be guilty of a class E felony.

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

5. It shall be an unlawful practice for any long-term care facility, as defined in section 192.2300, except a facility which is a residential care facility or an assisted living facility, as defined in section 198.006, which makes, either orally or in writing, representation to residents, prospective residents, their families or representatives regarding the quality of care provided, or systems or methods utilized for assurance or maintenance of standards of care to refuse to provide copies of documents which reflect the facility's evaluation of the quality of care, except that the facility may remove information that would allow identification of any resident. If the facility is requested to provide any copies, a reasonable amount, as established by departmental rule, may be charged.
6. Any long-term care facility, as defined in section 192.2300, which commits an unlawful practice under this section shall be liable for damages in a civil action of up to one thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing plaintiff, as allowed by the circuit court.

7. It shall be a rebuttable presumption of an unlawful practice under this section for a health care staffing agency during any declared statewide or national emergency to provide services if:

   (1) There is a gross disparity between the price charged or offered for the services and either:

       (a) The price at which the same service was sold or offered for sale by the health care staffing agency in its usual course of business immediately prior to the onset of the declared statewide or national emergency; or

       (b) The price at which the same or similar service is readily obtainable from other health care staffing agencies;

   (2) More than eighty-five percent of the entities purchasing the health care staffing agency's services during a period of at least one calendar month during the declared statewide or national emergency are enrolled in and receive payment for services delivered to patients from Medicare, MO HealthNet, children's health insurance program, or United States Department of Veterans Affairs; and

   (3) The health care staffing agency's earnings before interest, depreciation, and amortization during a period of at least one calendar quarter during the declared statewide or national emergency are at least fifteen percent higher than the health care staffing agency's earnings before interest, depreciation, and amortization during a like
period immediately preceding the declared statewide or
national emergency.

8. As used in this section, the term "health care
staffing agency" means a person, firm, corporation,
partnership, or association engaged for hire in the business
of providing or procuring temporary employment for health
care personnel in licensed health care facilities or home
health agencies. A health care staffing agency shall not be
construed to include an individual who only engages on his
or her own behalf to provide that individual's services on a
temporary basis to a licensed health care facility or home
health agency.