

FIRST REGULAR SESSION

# SENATE BILL NO. 261

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

0557S.01I

KRISTINA MARTIN, Secretary

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Section A. Section 407.020, RSMo, is repealed and one new  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

407.020. 1. The act, use or employment by any person  
2 of any deception, fraud, false pretense, false promise,  
3 misrepresentation, unfair practice or the concealment,  
4 suppression, or omission of any material fact in connection  
5 with the sale or advertisement of any merchandise in trade  
6 or commerce or the solicitation of any funds for any  
7 charitable purpose, as defined in section 407.453, in or  
8 from the state of Missouri, is declared to be an unlawful  
9 practice. The use by any person, in connection with the  
10 sale or advertisement of any merchandise in trade or  
11 commerce or the solicitation of any funds for any charitable  
12 purpose, as defined in section 407.453, in or from the state  
13 of Missouri of the fact that the attorney general has  
14 approved any filing required by this chapter as the  
15 approval, sanction or endorsement of any activity, project  
16 or action of such person, is declared to be an unlawful  
17 practice. Any act, use or employment declared unlawful by  
18 this subsection violates this subsection whether committed

19 before, during or after the sale, advertisement or  
20 solicitation.

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

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

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

38 (3) Any advertisement, merchandise, or transaction in  
39 which the merchandise consists of a new residence in a  
40 transaction in which the buyer is offered and accepts in the  
41 sale contract an express warranty by the builder or through  
42 a third-party warranty company paid for by the builder and  
43 the sale contract contains substantially the following  
44 disclaimer in all capital letters with characters of at  
45 least ten-point type: "THIS CONTRACT, MERCHANDISE AND  
46 PROPERTY CONVEYED UNDER THIS CONTRACT AND THE TRANSACTION  
47 BETWEEN THE SELLER AND BUYER IS EXCLUDED FROM COVERAGE UNDER  
48 THE MERCHANDISING PRACTICES ACT, SECTIONS 407.010 TO  
49 407.130, RSMO.". As used in this section, the term  
50 "residence" shall mean a single-family house, duplex,

51 triplex, quadruplex, or a unit in a multiunit residential  
52 structure in which title to each individual unit is  
53 transferred to the owner under a condominium or cooperative  
54 system and shall include common areas and common elements as  
55 defined in subdivision (4) of section 448.1-103.

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

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

69 5. It shall be an unlawful practice for any long-term  
70 care facility, as defined in section 192.2300, except a  
71 facility which is a residential care facility or an assisted  
72 living facility, as defined in section 198.006, which makes,  
73 either orally or in writing, representation to residents,  
74 prospective residents, their families or representatives  
75 regarding the quality of care provided, or systems or  
76 methods utilized for assurance or maintenance of standards  
77 of care to refuse to provide copies of documents which  
78 reflect the facility's evaluation of the quality of care,  
79 except that the facility may remove information that would  
80 allow identification of any resident. If the facility is  
81 requested to provide any copies, a reasonable amount, as  
82 established by departmental rule, may be charged.

83           6. Any long-term care facility, as defined in section  
84 192.2300, which commits an unlawful practice under this  
85 section shall be liable for damages in a civil action of up  
86 to one thousand dollars for each violation, and attorney's  
87 fees and costs incurred by a prevailing plaintiff, as  
88 allowed by the circuit court.

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

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

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

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

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

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

114 period immediately preceding the declared statewide or  
115 national emergency.

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

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