

Missouri Governor Signs Amendments to Consumer Protection and Punitive Damages Statutes into Law

Alert

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On July 2, 2020, Governor Mike Parson signed [Senate Bill \(SB\) 591](#), which makes a number of reforms to the Missouri Merchandising Practices Act (MMPA) and statutes governing the standards and procedure for recovering punitive damages. The changes are intended to narrow the scope of the MMPA, constrain punitive damages and attorney's fee awards, and make it easier for defendants to obtain early dismissal of MMPA claims brought by consumers who claim to have been misled by conduct that would not mislead a "reasonable consumer."

The MMPA is one of the most sweeping consumer protection laws in the country, covering a wide swath of conduct and authorizing fee-shifting. An MMPA claim is thus a powerful tool in the plaintiff lawyer's arsenal and—coupled with class-action allegations—can represent significant potential liability for businesses. Because it can be difficult to obtain dismissal of MMPA claims even when they are based on innocuous conduct unlikely to mislead or harm the average consumer, litigation costs may drive defendants to settle even weak claims.

SB 591's amendments to the MMPA will likely give defendants facing marginal cases a greater chance of obtaining dismissal and, even if the case goes to trial, may lower the prospects of a significant attorney's fee award where actual damages are limited or non-existent. The amendments will:

- Require both individual plaintiffs and class representatives seeking damages to prove: (1) they acted as a reasonable consumer would under the circumstances, (2) the business practice complained of would cause a reasonable person to enter into the transaction that resulted in damages, and (3) their damages can be proved with a reasonable degree of certainty using objective evidence

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- Empower courts to dismiss a plaintiff's claim as a matter of law if the plaintiff fails to plead facts demonstrating the conduct complained of would likely mislead a reasonable consumer
- Require any attorney's fees award in a case where damages are awarded to bear a reasonable relationship to the amount of the judgment
- Exempt warranties provided by builders in connection with the sale of new residences from the scope of the MMPA so long as the warranty contains a statutory disclaimer

SB 591 also alters the standards and procedures for recovering punitive damages in all cases, including those brought under the MMPA. The changes will:

- Preclude an award of punitive damages unless a plaintiff proves by clear and convincing evidence the defendant "intentionally harmed the plaintiff without just cause or acted with deliberate and flagrant disregard for the safety of others"
- Separately preclude the award of punitive damages if the jury awards only nominal actual damages, except in certain cases involving the violation of privacy, property, or constitutional rights
- Limit the circumstances under which punitive damages can be imposed on an employer for the acts of an agent
- Bar a plaintiff from requesting punitive damages in the initial pleading and instead require a plaintiff to request punitive damages in an amended claim requiring leave of court. To obtain leave, the plaintiff must submit evidence establishing a reasonable basis for the jury to award punitive damages.

Under the amended MMPA, defendants may now be able to obtain early dismissal of a plaintiff or class representative's claims if they can convince the court the plaintiff has not alleged conduct that would mislead a reasonable consumer. This change is likely to have the most impact in cases where a plaintiff alleges the defendant has committed a technical violation of some legal requirement that is unlikely to harm or mislead the average consumer (e.g., "slack-fill" claims).

It is questionable whether the amendments concerning attorney's fees will have much impact. The amendments state the amount of fees awarded "shall" bear a reasonable relationship to the amount of the judgment. The obvious intent here is to lower fee awards where actual damages are minimal. Currently, the relationship between fees and the amount recovered is but one factor considered by courts in awarding fees. However, the amended statute also provides that when the judgment grants equitable relief, the fee award shall be based on the time reasonably expended. Since that is the current standard and most plaintiff lawyers seek both damages and injunctive relief, it is not clear this change will meaningfully constrain fee awards.

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The most significant change to the punitive damages statutes for purposes of MMPA claims is the new procedure barring plaintiffs from requesting punitive damages without leave of court. These amendments are intended to give trial court judges a more active role in policing whether a defendant must face the threat of punitive damages. Depending on how rigorously trial courts apply this provision, defendants may gain greater leverage in settlement discussions without a punitive damages claim in the case.

One byproduct of the changes to the punitive damages statutes and MMPA attorney's fees provisions is that some out-of-state defendants may face increased difficulty removing cases to federal court. Historically, the ready availability of significant attorney's fee awards and punitive damages in MMPA cases has made it somewhat easy for out-of-state defendants to remove cases asserting MMPA claims. The elimination of plaintiffs' ability to request punitive damages in an initial pleading combined with restrictions on the amount of attorneys' fees that can be recovered may maroon a greater number of defendants in state court.

The amendments in SB 591 go into effect August 28, 2020.

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