

Missouri Set to Enact Reforms Limiting Claims for Punitive Damages and Violations of the MMPA

Amundsen Davis Commercial Litigation Alert
May 21, 2020

Missouri is poised to enact sweeping reforms aimed at limiting the availability of punitive damages and curtailing claims brought pursuant to the Missouri Merchandising Practices Act (MMPA).

On May 12, 2020, the Missouri House of Representatives passed SB 591, a tort reform measure passed by the Missouri Senate earlier this session. The bill now heads to the desk of Governor Mike Parson, who is expected to sign it into law.

Punitive Damages Restrictions

The bill imposes a heightened degree of proof for recovery of punitive damages. To meet the new standard, a plaintiff will have to produce “clear and convincing evidence” that the defendant either:

- intentionally harmed the plaintiff without just cause; or
- acted with a deliberate and flagrant disregard for the safety of others.

It also prohibits plaintiffs from making claims for punitive damages in their initial pleadings or without leave of the court. To obtain leave, plaintiffs will need to file a motion supported with affidavits, exhibits, or discovery materials demonstrating a “reasonable basis” for recovering punitive damages. Defendants are then permitted to oppose such motions with affidavits, exhibits, or discovery materials of their own.

Finally, the bill imposes additional restrictions to recover punitive damages from employers and principals for claims arising out of the actions of an employee or agent. Punitive damages in those cases will now be reserved to instances where a plaintiff establishes:

- the employer/principal authorized the act and the manner in which the act was performed;
- the employee/agent was unfit and the employer/principal was reckless for employing or retaining him or her;

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- the employee/agent was employed in a managerial capacity and acting within the scope of his or her employment; or
- the employer/principal ratified or approved the employee/agent's act.

These restrictions appear to seriously limit a plaintiff's ability to recover punitive damages from certain employers and principals, such as commercial motor carriers. Savvy plaintiff attorneys, however, will likely argue that an employer's failure to discipline the employee for his/her role in the underlying incident/accident evidences the employers' ratification/approval. Whether that alone would be sufficient to meet the exception will be for the courts to decide, which this blog will closely track going forward.

All of these changes will apply prospectively to claims filed on or after August 28, 2020.

MMPA Changes

The bill also significantly changes claims of unlawful business practices brought under the MMPA by adding an objective element for recovery. In addition to the current elements for MMPA claims, plaintiffs will now have to establish:

- he/she acted as a reasonable consumer would in light of all the circumstances;
- the unlawful business practice would cause a reasonable person to enter into the transaction in question; and
- individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty.

The new law also permits the trial court to dismiss an action where a plaintiff's claim fails to show that the unlawful business practice "would mislead a reasonable consumer." Additionally, it prohibits plaintiffs from pleading around the medical malpractice statute by bringing their claims under the MMPA.

The adoption of a "reasonable consumer" standard is certain to weed out certain frivolous MMPA claims and allow defendants to defend themselves by pointing to a plaintiff's objectively unreasonable behavior—such as, for example, purchasing the goods in question with knowledge that the defendant's advertisements or representations were false.

Notably, however, the bill does not require plaintiffs to establish reliance or personal awareness of the unlawful business practice at the time of the transaction. Establishing that the unlawful practice would cause a "reasonable person" to enter into the transition, along with the other elements, is enough.

Like the changes to the law on claims for punitive damages, the bill applies only to cases filed on or after August 28, 2020.

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