

FIRST REGULAR SESSION

# HOUSE BILL NO. 1022

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NOLTE (Sponsor), LANT AND BROWN (50) (Co-sponsors).

2103L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 407, RSMo, by adding thereto ten new sections relating to stolen information technology.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto ten new sections, to be known as sections 407.2150, 407.2153, 407.2156, 407.2159, 407.2162, 407.2165, 407.2168, 407.2171, 407.2174, and 407.2177, to read as follows:

**407.2150. As used in sections 407.2150 to 407.2177, the following terms shall mean:**

(1) "Article or product", any tangible article or product, but excludes:

(a) Any services sold, offered for sale, or made available in this state, including free services and online services;

(b) Any product subject to regulation by the United States Food and Drug Administration and that is primarily used for medical or medicinal purposes;

(c) Food and beverages; and

(d) Restaurant services;

(2) "Copyrightable end product", a work within the subject matter of copyright as specified in Section 102 of Title 17 of the United States Code, and which for the purposes of this chapter includes mask works protection as specified in Section 902 of Title 17 of the United States Code;

(3) "Essential component", a component of an article or product provided or to be provided to a third party under a contract, including a purchase order, without which the article or product will not perform as intended and for which there is no substitute

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.

16 component available that offers a comparable range and quality of functionalities and is  
17 available in comparable quantities and at a comparable price;

18 (4) "Manufacture", to directly manufacture, produce, or assemble an article or  
19 product subject to section 407.2153, in whole or substantial part, but does not include  
20 contracting with or otherwise engaging another person, or that person engaging another  
21 person, to develop, manufacture, produce, or assemble an article or product subject to  
22 section 407.2153;

23 (5) "Material competitive injury", at least a three percent retail price difference  
24 between the article or product made in violation of section 407.2153 designed to harm  
25 competition and a directly competing article or product that was manufactured without  
26 the use of stolen or misappropriated information technology, with such a price difference  
27 occurring over a four-month period of time;

28 (6) "Retail price", the retail price of stolen or misappropriated information  
29 technology charged at the time of, and in the jurisdiction where, the alleged theft or  
30 misappropriation occurred, multiplied by the number of stolen or misappropriated items  
31 used in the business operations of the person alleged to have violated section 407.2153;

32 (7) (a) "Stolen or misappropriated information technology", hardware or software  
33 that the person referred to in section 407.2153 acquired, appropriated, or used without the  
34 authorization of the owner of the information technology or the owner's authorized  
35 licensee in violation of applicable law, but does not include situations in which the  
36 hardware or software alleged to have been stolen or misappropriated was not available for  
37 retail purchase on a stand-alone basis at or before the time it was acquired, appropriated,  
38 or used by such a person;

39 (b) Information technology is considered to be used in a person's business  
40 operations if the person uses the technology in the manufacture, distribution, marketing,  
41 or sales of the articles or products subject to section 407.2153.

407.2153. Any person who manufactures an article or product while using stolen  
2 or misappropriated information technology in its business operations after notice and  
3 opportunity to cure as provided in section 407.2162 and, with respect to remedies sought  
4 under subsection 6 of section 407.2165 or section 407.2168, causes a material competitive  
5 injury as a result of such use of stolen or misappropriated information technology, is  
6 deemed to engage in an unfair act where such an article or product is sold or offered for  
7 sale in this state, either separately or as a component of another article or product, and in  
8 competition with an article or product sold or offered for sale in this state that was  
9 manufactured without violating this section. A person who engages in such an unfair act,  
10 and any articles or products manufactured by the person in violation of this section, is

11 subject to the liabilities and remedial provisions of sections 407.2150 to 407.2177 in an  
12 action by the attorney general or any person described in subsection 5 of section 407.2165,  
13 except as provided in sections 407.2156 to 407.2174.

2 **407.2156. No action may be brought under sections 407.2150 to 407.2177, and no  
liability results, where:**

3 (1) The end article or end product sold or offered for sale in this state and alleged  
4 to violate section 407.2153 is:

5 (a) A copyrightable end product;

6 (b) Merchandise manufactured by or on behalf of, or under a license from, a  
7 copyright owner and which displays or embodies a name, character, artwork, or other  
8 indicia of or from a work that falls within:

9 a. This subdivision; or

10 b. Merchandise manufactured by or on behalf of, or under a license from, a  
11 copyright or trademark owner and that displays or embodies a name, character, artwork,  
12 or other indicia of or from a theme park, theme park attraction, or other facility associated  
13 with a theme park; or

14 c. Packaging, carrier media, or promotional or advertising materials for any end  
15 article, end product, or merchandise that falls within paragraph (a) or (b) of this  
16 subdivision;

17 (2) The allegation that the information technology is stolen or misappropriated is  
18 based on a claim that the information technology or its use infringes a patent or  
19 misappropriates a trade secret under applicable law or that could be brought under any  
20 provision of Title 35 of the United States Code;

21 (3) The allegation that the information technology is stolen or misappropriated is  
22 based on a claim that the defendant's use of the information technology violates the terms  
23 of a license that allows users to modify and redistribute any source code associated with  
24 the technology free of charge; or

25 (4) The allegation is based on a claim that the person violated section 407.2153 by  
26 aiding, abetting, facilitating, or assisting someone else to acquire, appropriate, use, sell, or  
27 offer to sell, or by providing someone else with access to, information technology without  
28 authorization of the owner of the information technology or the owner's authorized  
29 licensee in violation of applicable law.

2 **407.2159. No injunction shall be issued against a person other than the person  
3 adjudicated to have violated section 407.2153, and no attachment order shall be issued  
4 against articles or products other than articles or products in which the person alleged to  
violate section 407.2153 holds title. A person other than the person alleged to violate**

5 section 407.2153 includes any person other than the actual manufacturer who contracts  
6 with or otherwise engages another person to develop, manufacture, produce, market,  
7 distribute, advertise, or assemble an article or product alleged to violate section 407.2153.

2 **407.2162. (1) No action shall be brought under section 407.2153 unless the person**  
3 **subject to section 407.2153 received written notice of the alleged use of the stolen or**  
4 **misappropriated information technology from the owner or exclusive licensee of the**  
5 **information technology or the owner's agent and the person:**

6 (a) Failed to establish that its use of the information technology in question did not  
7 violate section 407.2153; or

8 (b) Failed, within ninety days after receiving such a notice, to cease use of the  
9 owner's stolen or misappropriated information technology. However, if the person  
10 commences and thereafter proceeds diligently to replace the information technology with  
11 information technology whose use would not violate section 407.2153, such a period shall  
12 be extended for an additional period of ninety days, not to exceed one hundred eighty days'  
13 total. The information technology owner or the owner's agent may extend any period  
14 described in this section.

15 (2) To satisfy the requirements of this section, written notice shall, under penalty  
16 of perjury:

17 (a) Identify the stolen or misappropriated information technology;

18 (b) Identify the lawful owner or exclusive licensee of the information technology;

19 (c) Identify the applicable law the person is alleged to be violating and state that  
20 the notifier has a reasonable belief that the person has acquired, appropriated, or used the  
21 information technology in question without authorization of the owner of the information  
22 technology or the owner's authorized licensee in violation of such applicable law;

23 (d) To the extent known by the notifier, state the manner in which the information  
24 technology is being used by the defendant;

25 (e) State the articles or products to which the information technology relates; and

26 (f) Specify the basis and the particular evidence upon which the notifier bases such  
27 an allegation.

28 (3) The written notification shall state, under penalty of perjury, that, after a  
29 reasonable and good-faith investigation, the information in the notice is accurate based on  
the notifier's reasonable knowledge, information, and belief.

30 **407.2165. 1. No earlier than ninety days after the provision of notice in accordance**  
31 **with section 407.2162, the attorney general, or any person described in subsection 5 of this**  
32 **section, may bring an action against any person that is subject to section 407.2153:**

4           (1) To enjoin violation of section 407.2153, including by enjoining the person from  
5 selling or offering to sell in this state articles or products that are subject to section  
6 407.2153, except as provided in subsection 6 of this section. However, such an injunction  
7 does not encompass articles or products to be provided to a third party that establishes that  
8 such a third party has satisfied one or more of the affirmative defenses set forth in  
9 subsection 1 of section 407.2171 with respect to the manufacturer alleged to have violated  
10 section 407.2153;

11           (2) Only after a determination by the court that the person has violated section  
12 407.2153, to recover the greater of:

13           (a) Actual damages, which may be imposed only against the person who violated  
14 section 407.2153; or

15           (b) Statutory damages of no more than the retail price of the stolen or  
16 misappropriated information technology, which may be imposed only against the person  
17 who violated section 407.2153; or

18           (3) In the event the person alleged to have violated section 407.2153 has been  
19 subject to a final judgment or has entered into a final settlement, or any products  
20 manufactured by such a person and alleged to violate section 407.2153 have been the  
21 subject of an injunction or attachment order, in any federal or state court in this state or  
22 any other state, arising out of the same theft or misappropriation of information  
23 technology, the court shall dismiss the action. If such a person is a defendant in an ongoing  
24 action, or any products manufactured by such a person and alleged to violate section  
25 407.2153 are the subject of an ongoing injunction or attachment order, in any federal or  
26 state court in this state or any other state, arising out of the same theft or misappropriation  
27 of information technology, the court shall stay the action against such a person pending  
28 resolution of the other action. In the event the other action results in a final judgment or  
29 final settlement, the court shall dismiss the action against the person.

30           2. After determination by the court that a person has violated section 407.2153 and  
31 entry of a judgment against the person for violating section 407.2153, the attorney general,  
32 or a person described in subsection 5 of this section, may add to the action a claim for  
33 actual damages against a third party who sells or offers to sell in this state products made  
34 by that person in violation of section 407.2153, subject to the provisions of section 407.2171.  
35 However, damages may be imposed against a third party only if:

36           (1) The third party's agent for service of process properly was served with a copy  
37 of a written notice sent to the person alleged to have violated section 407.2153 that satisfies  
38 the requirements of section 407.2162 at least ninety days prior to the entry of the judgment;

39           (2) The person who violated section 407.2153 did not make an appearance or does  
40 not have sufficient attachable assets to satisfy a judgment against the person;

41           (3) Such a person either manufactured the final product or produced a component  
42 equal to thirty percent or more of the value of the final product;

43           (4) Such a person has a direct contractual relationship with the third party  
44 respecting the manufacture of the final product or component; and

45           (5) The third party has not been subject to a final judgment in any federal or state  
46 court in this state or any other state arising out of the same theft or misappropriation of  
47 information technology. However, in the event the third party is a party to an ongoing suit  
48 for damages, or has entered an appearance as an interested third party in proceedings in  
49 rem, in any federal or state court in this state or any other state arising out of the same  
50 theft or misappropriation of information technology, the court shall stay the action against  
51 the third party pending resolution of the other action. In the event the other action results  
52 in a final judgment, the court shall dismiss the action against the third party and any in  
53 rem action as to any articles or products manufactured for such a third party or that have  
54 been or are to be supplied to such a third party.

55           3. An award of damages against such a third party under subsection 2 of this  
56 section shall be the lesser of the retail price of the stolen or misappropriated information  
57 technology at issue or two hundred fifty thousand dollars, less any amounts recovered from  
58 the person adjudicated to have violated section 407.2153, and subdivision (1) of subsection  
59 4 of this section does not apply to such an award or recovery against the third party.

60           4. In an action under sections 407.2150 to 407.2177, a court may:

61           (1) Against the person adjudicated to have violated section 407.2153, increase the  
62 damages up to three times the damages authorized by subdivision (2) of subsection 1 of this  
63 section where the court finds that the person's use of the stolen or misappropriated  
64 information technology was willful;

65           (2) With respect to an award under subsection 1 of this section only, award costs  
66 and reasonable attorneys' fees to:

67           (a) A prevailing plaintiff in actions brought by an injured person under section  
68 407.2153; or

69           (b) A prevailing defendant in actions brought by an allegedly injured person; and

70           (3) With respect to an action under subsection 2 of this section brought by a private  
71 plaintiff only, award costs and reasonable attorneys' fees to a third party for all litigation  
72 expenses including discovery expenses incurred by that party if it prevails on the  
73 requirement set forth in subdivision (3) of subsection 2 of this section or who qualifies for  
74 an affirmative defense under section 407.2171. However, in a case in which the third party

75 received a copy of the notification described in subdivision (1) of subsection 2 of this section  
76 at least ninety days before the filing of the action under subsection 2 of this section, with  
77 respect to a third party's reliance on the affirmative defenses set forth in subdivisions (3)  
78 and (4) of subsection 1 of section 407.2171, the court may award costs and reasonable  
79 attorneys' fees only if all of the conduct on which the affirmative defense is based was  
80 undertaken by the third party, and the third party notified the plaintiff of the conduct,  
81 prior to the end of the ninety-day period.

82 **5. A person is deemed to have been injured by the sale or offer for sale of a directly**  
83 **competing article or product subject to section 407.2153 if the person establishes by a**  
84 **preponderance of the evidence that:**

85 **(1) The person manufactures articles or products that are sold or offered for sale**  
86 **in this state in direct competition with articles or products that are subject to section**  
87 **407.2153;**

88 **(2) The person's articles or products were not manufactured using stolen or**  
89 **misappropriated information technology of the owner of the information technology;**

90 **(3) The person suffered economic harm, which may be shown by evidence that the**  
91 **retail price of the stolen or misappropriated information technology was twenty thousand**  
92 **dollars or more; and**

93 **(4) If the person is proceeding in rem or seeks injunctive relief, that the person**  
94 **suffered material competitive injury as a result of the violation of section 407.2153.**

95 **6. (1) If the court determines that a person found to have violated section 407.2153**  
96 **lacks sufficient attachable assets in this state to satisfy a judgment rendered against it, the**  
97 **court may enjoin the sale or offering for sale in this state of any articles or products subject**  
98 **to section 407.2153, except as provided in section 407.2159.**

99 **(2) To the extent that an article or product subject to section 407.2153 is an**  
100 **essential component of a third party's article or product, the court shall deny injunctive**  
101 **relief as to such an essential component, provided that the third party has undertaken good**  
102 **faith efforts within the third party's rights under its applicable contract with the**  
103 **manufacturer to direct the manufacturer of the essential component to cease the theft or**  
104 **misappropriation of information technology in violation of section 407.2153, which may**  
105 **be satisfied, without limitation, by the third party issuing a written directive to the**  
106 **manufacturer demanding that it cease the theft or misappropriation and demanding that**  
107 **the manufacturer provide the third party with copies of invoices, purchase orders, licenses,**  
108 **or other verification of lawful use of the information technology at issue.**

109 **7. The court shall determine whether a cure period longer than the period reflected**  
110 **in section 407.2162 would be reasonable given the nature of the use of the information**

111 technology that is the subject of the action and the time reasonably necessary either to  
112 bring such use into compliance with applicable law or to replace the information  
113 technology with information technology that would not violate section 407.2153. If the  
114 court deems that a longer cure period would be reasonable, then the action shall be stayed  
115 until the end of that longer cure period. If by the end of that longer cure period, the  
116 defendant has established that its use of the information technology in question did not  
117 violate section 407.2153, or the defendant ceased use of the stolen or misappropriated  
118 information technology, then the action must be dismissed.

407.2168. 1. In a case in which the court is unable to obtain personal jurisdiction  
2 over a person subject to section 407.2153, the court may proceed in rem against any articles  
3 or products subject to section 407.2153 sold or offered for sale in this state in which the  
4 person alleged to have violated section 407.2153 holds title. Except as provided in section  
5 407.2159 and subsections 2 to 4 of this section, all such articles or products are subject to  
6 attachment at or after the time of filing a complaint, regardless of the availability or  
7 amount of any monetary judgment.

8 2. At least ninety days prior to the enforcement of an attachment order against  
9 articles or products under subsection 1 of this section, the court shall notify any person in  
10 possession of the articles or products of the pending attachment order. Prior to the  
11 expiration of the ninety-day period, any person for whom the articles or products were  
12 manufactured, or to whom the articles or products have been or are to be supplied, under  
13 an existing contract or purchase order, may:

14 (1) Establish that the person has satisfied one or more of the affirmative defenses  
15 set forth in subsection 1 of section 407.2171 with respect to the manufacturer alleged to  
16 have violated section 407.2153, in which case the attachment order shall be dissolved only  
17 with respect to those articles or products that were manufactured for such a person, or  
18 have been or are to be supplied to such a person, under an existing contract or purchase  
19 order; or

20 (2) Post a bond with the court equal to the retail price of the allegedly stolen or  
21 misappropriated information technology or twenty-five thousand dollars, whichever is less,  
22 in which case the court shall stay enforcement of the attachment order against the articles  
23 or products and shall proceed on the basis of its jurisdiction over the bond. The person  
24 posting the bond shall recover the full amount of such bond, plus interest, after the  
25 issuance of a final judgment.

26 3. In the event the person posting the bond under subdivision (2) of subsection 2  
27 of this section is entitled to claim an affirmative defense in section 407.2171, and that  
28 person establishes with the court that the person is entitled to any affirmative defense, the

29 court shall award costs and reasonable attorneys' fees to the person posting the bond and  
30 against the plaintiff in the event the plaintiff proceeds with an action under subsection 2  
31 of section 407.2165 against the person posting the bond.

32 4. In the event that the court does not provide notification as described in  
33 subsection 2 of this section, the court, upon motion of any third party, shall stay the  
34 enforcement of the attachment order for ninety days as to articles or products  
35 manufactured for the third party, or that have been or are to be supplied to the third  
36 party, under an existing contract or purchase order, during which the ninety-day period  
37 the third party may avail itself of the options set forth in subdivisions (1) and (2) of  
38 subsection 2 of this section.

407.2171. 1. A court shall not award damages against any third party under  
2 subsection 2 of section 407.2165 where that party, after having been afforded reasonable  
3 notice of at least ninety days by proper service upon such party's agent for service of  
4 process and opportunity to plead any of the affirmative defenses set forth in this  
5 subsection, establishes by a preponderance of the evidence any of the following:

6 (1) Such a person is the end-consumer or end-user of an article or product subject  
7 to section 407.2153, or acquired the article or product after its sale to an end-consumer or  
8 end-user;

9 (2) Such a person is a business with annual revenues not in excess of fifty million  
10 dollars;

11 (3) The person acquired the articles or products:

12 (a) And had either a code of conduct or other written document governing the  
13 person's commercial relationships with the manufacturer adjudicated to have violated  
14 section 407.2153 and which includes commitments, such as general commitments to comply  
15 with applicable laws, that prohibit use of the stolen or misappropriated information  
16 technology by such manufacturer; or written assurances from the manufacturer of the  
17 articles or products that the articles or products, to the manufacturer's reasonable  
18 knowledge, were manufactured without the use of stolen or misappropriated information  
19 technology in the manufacturer's business operations. However, with respect to both  
20 subparagraphs a. and b. of this paragraph, within one hundred eighty days of receiving  
21 written notice of the judgment against the manufacturer for a violation of section 407.2153  
22 and a copy of a written notice that satisfies the requirements of section 407.2162, the person  
23 shall undertake commercially reasonable efforts to do any of the following:

24 a. Exchange written correspondence confirming that such a manufacturer is not  
25 using the stolen or misappropriated information technology in violation of section  
26 407.2153, which may be satisfied, without limitation, by obtaining written assurances from

27 the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other  
28 verification of lawful use of the information technology at issue;

29       **b. Direct the manufacturer to cease the theft or misappropriation, which may be**  
30 **satisfied, without limitation, by the third party issuing a written directive to the**  
31 **manufacturer demanding that it cease such theft or misappropriation and demanding that**  
32 **the manufacturer provide the third party with copies of invoices, purchase orders, licenses,**  
33 **or other verification of lawful use of the information technology at issue; and for purposes**  
34 **of clarification, the third party need take no additional action to fully avail itself of this**  
35 **affirmative defense; or**

36       **c. In a case in which the manufacturer has failed to cease such a theft or**  
37 **misappropriation within the one hundred eighty-day period, and the third party has not**  
38 **fulfilled either option under subparagraph a. or b. of this paragraph, prevent the future**  
39 **acquisition of the articles or products from the manufacturer during the period that the**  
40 **manufacturer continues to engage in the theft or misappropriation subject to section**  
41 **407.2153 where doing so would not constitute a breach of an agreement between the person**  
42 **and the manufacturer for the manufacture of the articles or products in question that was**  
43 **entered into on or before one hundred eighty days after the effective date of this section;**  
44 **or**

45       **(b) Under an agreement between the person and a manufacturer for the**  
46 **manufacture of the articles or products in question that was entered into before one**  
47 **hundred eighty days after August 28, 2011. However, within one hundred eighty days of**  
48 **receiving written notice of the judgment against the manufacturer for a violation of section**  
49 **407.2153 and a copy of a written notice that satisfies the requirements of section 407.2162,**  
50 **the person shall undertake commercially reasonable efforts to do any of the following:**

51       **a. Obtain from the manufacturer written assurances that such a manufacturer is**  
52 **not using the stolen or misappropriated information technology in violation of section**  
53 **407.2153, which may be satisfied, without limitation, by obtaining written assurances from**  
54 **the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other**  
55 **verification of lawful use of the information technology at issue;**

56       **b. Direct the manufacturer to cease the theft or misappropriation, which may be**  
57 **satisfied, without limitation, by the third party issuing a written directive to the**  
58 **manufacturer demanding that it cease such theft or misappropriation and demanding that**  
59 **the manufacturer provide the third party with copies of invoices, purchase orders, licenses,**  
60 **or other verification of lawful use of the information technology at issue; and for purposes**  
61 **of clarification, the third party need take no additional action to fully avail itself of this**  
62 **affirmative defense; or**

63           c. In a case in which the manufacturer has failed to cease the theft or  
64 misappropriation within the one hundred eighty-day period, and the third party has not  
65 fulfilled either option under subparagraph a. or b. of this paragraph, cease the future  
66 acquisition of the articles or products from the manufacturer during the period that the  
67 manufacturer continues to engage in the theft or misappropriation subject to section  
68 407.2153 where doing so would not constitute a breach of such agreement;

69           (4) The person has made commercially reasonable efforts to implement practices  
70 and procedures to require its direct manufacturers, in manufacturing articles or products  
71 for such person, not to use stolen or misappropriated information technology in violation  
72 of section 407.2153. A person may satisfy this subdivision by:

73           (a) Adopting and undertaking commercially reasonable efforts to implement a code  
74 of conduct or similar written requirements, which are applicable to the person's direct  
75 manufacturers, that prohibit the use of stolen or misappropriated information technology  
76 by such a manufacturer, subject to a right of audit, and the person either:

77           a. Has a practice of auditing its direct manufacturers on a periodic basis in  
78 accordance with generally accepted industry standards; or

79           b. Requires in its agreements with its direct manufacturers that they submit to  
80 audits by a third party, which may include a third-party association of businesses  
81 representing the owner of the stolen or misappropriated intellectual property, and further  
82 provides that a failure to remedy any deficiencies found in such an audit that constitute a  
83 violation of the applicable law of the jurisdiction where the deficiency occurred constitutes  
84 a breach of the contract, subject to cure within a reasonable period of time; or

85           (b) Adopting and undertaking commercially reasonable efforts to implement a code  
86 of conduct or similar written requirements, which are applicable to the person's direct  
87 manufacturers, that prohibit use of stolen or misappropriated information technology by  
88 such a manufacturer, and the person undertakes practices and procedures to address  
89 compliance with the prohibition against the use of the stolen or misappropriated  
90 information technology in accordance with the applicable code of conduct or written  
91 requirements; or

92           (5) The person does not have a contractual relationship with the person alleged to  
93 have violated section 407.2153 respecting the manufacture of the articles or products  
94 alleged to have been manufactured in violation of section 407.2153.

95           2. A third party shall have the opportunity to be heard regarding whether an  
96 article or product is an essential component provided or to be provided to a third party,  
97 and shall have the right to file a motion to dismiss any action brought against it under  
98 subsection 2 of section 407.2165.

99           **3. The court may not enforce any award for damages against such a third party**  
100 **until after the court has ruled on that party's claim of eligibility for any of the affirmative**  
101 **defenses set out in this section, and prior to such a ruling may allow discovery, in an action**  
102 **under subsection 2 of section 407.2165, only on the particular defenses raised by the third**  
103 **party.**

104           **4. The court shall allow discovery against a third party on an issue only after all**  
105 **discovery on that issue between the parties has been completed and only if the evidence**  
106 **produced as a result of the discovery does not resolve an issue of material dispute between**  
107 **the parties.**

108           **5. Any confidential or otherwise sensitive information submitted by a party under**  
109 **this section is subject to a protective order.**

**407.2174. A court may not enforce an award of damages against a third party**  
2 **under subsection 2 of section 407.2165 for a period of eighteen months from August 28,**  
3 **2011.**

**407.2177. A violation of sections 407.2150 to 407.2182 shall not be considered a**  
2 **violation of this chapter. The remedies provided under sections 407.2150 to 407.2177 are**  
3 **the exclusive remedies for the parties.**