

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1915

99TH GENERAL ASSEMBLY

5517H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 407.1107, RSMo, and to enact in lieu thereof two new sections relating to consumer protection, with a penalty provision.

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

Section A. Section 407.1107, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 407.315 and 407.1107, to read as follows:

407.315. 1. As used in this section, the following terms mean:

(1) **“American Indian tribe”, any Indian tribe federally recognized by the Bureau of Indian Affairs of the United States Department of the Interior;**

(2) **“American Indian”, a person who is a citizen or enrolled member of an American Indian tribe;**

(3) **“Imitation American Indian art or craft”, any basic article purporting to be of American Indian style, make, origin, or design that was not made by American Indian labor and workmanship;**

(4) **“Authentic American Indian art or craft”, any article of American Indian style, make, origin, or design that was made wholly or in part by American Indian labor and workmanship including, but not limited to, any Kachina doll, rosette, necklace, choker, barrette, hair tie, medallion, pin, pendant, bolo tie, belt, belt buckle, cuff links, tie clasp, tie bar, ring, earring, purse, blanket, shawl, moccasin, drum, or pottery or any visual or performing arts or literature;**

(5) **“Merchant”, any person engaged in the sale to the public of imitation American Indian art or craft or authentic American Indian art or craft.**

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.

17 **2. No merchant shall distribute, trade, sell, or offer for sale or trade within this**
18 **state any article represented as being made by American Indians unless the article is an**
19 **authentic American Indian art or craft. All such articles purporting to be of silver shall**
20 **be made of coin or sterling silver.**

21 **3. Any merchant who knowingly and willfully tags or labels any article as being an**
22 **American Indian art or craft when it does not meet the specifications of this section shall**
23 **be subject to a fine of not less than twenty-five dollars and not more than two hundred**
24 **dollars, to imprisonment for not less than thirty days and not more than ninety days, or to**
25 **both such fine and imprisonment.**

 407.1107. 1. The attorney general may initiate proceedings relating to a knowing
2 violation or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings
3 may include, without limitation, an injunction, a **minimum** civil penalty of **two thousand five**
4 **hundred dollars** up to a maximum of five thousand dollars for each knowing violation and
5 additional relief in any court of competent jurisdiction; **except that no defendant shall have**
6 **to pay more than one hundred thousand dollars in civil penalties for violations that**
7 **occurred within a one month period. Upon a finding of a second violation of section**
8 **407.1098 or 407.1104, the minimum civil penalty shall be five thousand dollars up to a**
9 **maximum of ten thousand dollars; except that no defendant shall have to pay more than**
10 **two hundred thousand dollars in civil penalties for violations that occurred within a one**
11 **month period. Upon a finding of a third violation of section 407.1098 or 407.1104, the**
12 **minimum civil penalty shall be seven thousand five hundred dollars up to a maximum of**
13 **fifteen thousand dollars.** The attorney general may issue investigative demands, issue
14 subpoenas, administer oaths and conduct hearings in the course of investigating a violation of
15 section 407.1098 or 407.1104. **When a final judgment is entered against a party in violation**
16 **of section 407.1098 or 407.1104, the court, in its discretion, may enter an order of**
17 **restitution, payable to the state. It shall be the duty of the attorney general to distribute**
18 **such funds, in an amount not to exceed one hundred dollars per person, to those persons**
19 **who reported the violation of section 407.1098 or 407.1104 upon which the judgment was**
20 **entered.**

21 2. In addition to the penalties provided in subsection 1 of this section, any person or
22 entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures
23 provided in sections 407.010 to 407.130. The remedies available in this section are cumulative
24 and in addition to any other remedies available by law.

25 3. Any person who has received more than one telephone solicitation within any
26 twelve-month period by or on behalf of the same person or entity in violation of section
27 407.1098 or 407.1104 may either:

28 (1) Bring an action to enjoin such violation;

29 (2) Bring an action to recover for actual monetary loss from such knowing violation or
30 to receive up to five thousand dollars in damages for each such knowing violation, whichever
31 is greater; or

32 (3) Bring both such actions.

33 4. It shall be a defense in any action or proceeding brought pursuant to this section that
34 the defendant has established and implemented, with due care, reasonable practices and
35 procedures to effectively prevent telephone solicitations in violation of section 407.1098 or
36 407.1104.

37 5. No action or proceeding may be brought pursuant to this section:

38 (1) More than two years after the person bringing the action knew or should have known
39 of the occurrence of the alleged violation; or

40 (2) More than two years after the termination of any proceeding or action arising out of
41 the same violation or violations by the state of Missouri, whichever is later.

42 6. A court of this state may exercise personal jurisdiction over any nonresident or his or
43 her executor or administrator as to an action or proceeding authorized by this section in the
44 manner otherwise provided by law.

45 7. The remedies, duties, prohibitions and penalties of sections 407.1095 to 407.1107 are
46 not exclusive and are in addition to all other causes of action, remedies and penalties provided
47 by law.

48 8. No provider of telephone caller identification service shall be held liable for violations
49 of section 407.1098 or 407.1104 committed by other persons or entities.

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