

FIRST REGULAR SESSION

# SENATE BILL NO. 92

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS GREEN, BRAY, DAYS, WRIGHT-JONES, WILSON,  
JUSTUS, SMITH AND McKENNA.

Pre-filed December 3, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0399S.011

## AN ACT

To repeal sections 409.1-102, 409.2-202, 409.3-304, 409.4-401, 409.4-404, 409.4-408, 409.4-412, 409.5-501, 409.6-604, and 409.6-607, RSMo, and to enact in lieu thereof ten new sections relating to the Missouri securities act.

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

Section A. Sections 409.1-102, 409.2-202, 409.3-304, 409.4-401, 409.4-404, 409.4-408, 409.4-412, 409.5-501, 409.6-604, and 409.6-607, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 409.1-102, 409.2-202, 409.3-304, 409.4-401, 409.4-404, 409.4-408, 409.4-412, 409.5-501, 409.6-604, and 409.6-607, to read as follows:

409.1-102. In this act, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.

(2) "Commissioner" means the commissioner of securities appointed by the secretary of state.

(3) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 (C) Any other banking institution, whether incorporated or not, doing  
16 business under the laws of a state or of the United States, a substantial portion  
17 of the business of which consists of receiving deposits or exercising fiduciary  
18 powers similar to those permitted to be exercised by national banks under the  
19 authority of the Comptroller of the Currency pursuant to Section 1 of Public Law  
20 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state  
21 or federal agency having supervision over banks, and which is not operated for  
22 the purpose of evading this act; and

23 (D) A receiver, conservator, or other liquidating agent of any institution  
24 or firm included in subparagraph (A), (B), or (C).

25 (4) "Broker-dealer" means a person engaged in the business of effecting  
26 transactions in securities for the account of others or for the person's own  
27 account. The term does not include:

28 (A) An agent;

29 (B) An issuer;

30 (C) A bank, a trust company organized or chartered under the laws of this  
31 state, or a savings institution, if its activities as a broker-dealer are limited to  
32 those specified in subsections 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited  
33 to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange  
34 Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the  
35 conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of  
36 1934 (15 U.S.C. Section 78c(a)(4));

37 (D) An international banking institution; or

38 (E) A person excluded by rule adopted or order issued under this act.

39 (5) "Depository institution" means:

40 (A) A bank; or

41 (B) A savings institution, trust company, credit union, or similar  
42 institution that is organized or chartered under the laws of a state or of the  
43 United States, authorized to receive deposits, and supervised and examined by  
44 an official or agency of a state or the United States if its deposits or share  
45 accounts are insured to the maximum amount authorized by statute by the  
46 Federal Deposit Insurance Corporation, the National Credit Union Share  
47 Insurance Fund, or a successor authorized by federal law. The term does not  
48 include:

49 (i) An insurance company or other organization primarily engaged in the  
50 business of insurance;

51 (ii) A Morris Plan bank; or

52 (iii) An industrial loan company **that is not an "insured depository**  
53 **institution" as defined in Section 3(c)(2) of the Federal Deposit**  
54 **Insurance Act, 12 U.S.C. 1813(c)(2), or any successor federal statute.**

55 (6) "Federal covered investment adviser" means a person registered under  
56 the Investment Advisers Act of 1940.

57 (7) "Federal covered security" means a security that is, or upon completion  
58 of a transaction will be, a covered security under Section 18(b) of the Securities  
59 Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant  
60 to that provision.

61 (8) "Filing" means the receipt under this act of a record by the  
62 commissioner or a designee of the commissioner.

63 (9) "Fraud", "deceit", and "defraud" are not limited to common law deceit.

64 (10) "Guaranteed" means guaranteed as to payment of all principal and  
65 all interest.

66 (11) "Institutional investor" means any of the following, whether acting  
67 for itself or for others in a fiduciary capacity:

68 (A) A depository institution, a trust company organized or chartered under  
69 the laws of this state, or an international banking institution;

70 (B) An insurance company;

71 (C) A separate account of an insurance company;

72 (D) An investment company as defined in the Investment Company Act  
73 of 1940;

74 (E) A broker-dealer registered under the Securities Exchange Act of 1934;

75 (F) An employee pension, profit-sharing, or benefit plan if the plan has  
76 total assets in excess of ten million dollars or its investment decisions are made  
77 by a named fiduciary, as defined in the Employee Retirement Income Security Act  
78 of 1974, that is a broker-dealer registered under the Securities Exchange Act of  
79 1934, an investment adviser registered or exempt from registration under the  
80 Investment Advisers Act of 1940, an investment adviser registered under this act,  
81 a depository institution, or an insurance company;

82 (G) A plan established and maintained by a state, a political subdivision  
83 of a state, or an agency or instrumentality of a state or a political subdivision of  
84 a state for the benefit of its employees, if the plan has total assets in excess of ten  
85 million dollars or its investment decisions are made by a duly designated public  
86 official or by a named fiduciary, as defined in the Employee Retirement Income

87 Security Act of 1974, that is a broker-dealer registered under the Securities  
88 Exchange Act of 1934, an investment adviser registered or exempt from  
89 registration under the Investment Advisers Act of 1940, an investment adviser  
90 registered under this act, a depository institution, or an insurance company;

91 (H) A trust, if it has total assets in excess of ten million dollars, its  
92 trustee is a depository institution, and its participants are exclusively plans of  
93 the types identified in subparagraph (F) or (G), regardless of the size of their  
94 assets, except a trust that includes as participants self-directed individual  
95 retirement accounts or similar self-directed plans;

96 (I) An organization described in Section 501(c)(3) of the Internal Revenue  
97 Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar  
98 business trust, limited liability company, or partnership, not formed for the  
99 specific purpose of acquiring the securities offered, with total assets in excess of  
100 ten million dollars;

101 (J) A small business investment company licensed by the Small Business  
102 Administration under Section 301(c) of the Small Business Investment Act of  
103 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars;

104 (K) A private business development company as defined in Section  
105 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22))  
106 with total assets in excess of ten million dollars;

107 (L) A federal covered investment adviser acting for its own account;

108 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other  
109 than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R.  
110 230.144A);

111 (N) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i)  
112 adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

113 (O) Any other person, other than an individual, of institutional character  
114 with total assets in excess of ten million dollars not organized for the specific  
115 purpose of evading this act; or

116 (P) Any other person specified by rule adopted or order issued under this  
117 act.

118 (12) "Insurance company" means a company organized as an insurance  
119 company whose primary business is writing insurance or reinsuring risks  
120 underwritten by insurance companies and which is subject to supervision by the  
121 insurance commissioner or a similar official or agency of a state.

122 (13) "Insured" means insured as to payment of all principal and all

123 interest.

124 (14) "International banking institution" means an international financial  
125 institution of which the United States is a member and whose securities are  
126 exempt from registration under the Securities Act of 1933.

127 (15) "Investment adviser" means a person that, for compensation, engages  
128 in the business of advising others, either directly or through publications or  
129 writings, as to the value of securities or the advisability of investing in,  
130 purchasing, or selling securities or that, for compensation and as a part of a  
131 regular business, issues or promulgates analyses or reports concerning  
132 securities. The term includes a financial planner or other person that, as an  
133 integral component of other financially related services, provides investment  
134 advice to others for compensation as part of a business or that holds itself out as  
135 providing investment advice to others for compensation. The term does not  
136 include:

137 (A) An investment adviser representative;

138 (B) A lawyer, accountant, engineer, or teacher whose performance of  
139 investment advice is solely incidental to the practice of the person's profession;

140 (C) A broker-dealer or its agents whose performance of investment advice  
141 is solely incidental to the conduct of business as a broker-dealer and that does not  
142 receive special compensation for the investment advice;

143 (D) A publisher of a bona fide newspaper, news magazine, or business or  
144 financial publication of general and regular circulation;

145 (E) A federal covered investment adviser;

146 (F) A bank, a trust company organized or chartered under the laws of this  
147 state, or a savings institution;

148 (G) Any other person that is excluded by the Investment Advisers Act of  
149 1940 from the definition of investment adviser; or

150 (H) Any other person excluded by rule adopted or order issued under this  
151 act.

152 (16) "Investment adviser representative" means an individual employed  
153 by or associated with an investment adviser or federal covered investment adviser  
154 and who makes any recommendations or otherwise gives investment advice  
155 regarding securities, manages accounts or portfolios of clients, determines which  
156 recommendation or advice regarding securities should be given, provides  
157 investment advice or holds herself or himself out as providing investment advice,  
158 receives compensation to solicit, offer, or negotiate for the sale of or for selling

159 investment advice, or supervises employees who perform any of the  
160 foregoing. The term does not include an individual who:

161 (A) Performs only clerical or ministerial acts;

162 (B) Is an agent whose performance of investment advice is solely  
163 incidental to the individual acting as an agent and who does not receive special  
164 compensation for investment advisory services;

165 (C) Is employed by or associated with a federal covered investment  
166 adviser, unless the individual has a "place of business" in this state as that term  
167 is defined by rule adopted under Section 203A of the Investment Advisers Act of  
168 1940 (15 U.S.C. Section 80b-3a) and is:

169 (i) An "investment adviser representative" as that term is defined by rule  
170 adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C.  
171 Section 80b-3a); or

172 (ii) Not a "supervised person" as that term is defined in Section 202(a)(25)  
173 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

174 (D) Is excluded by rule adopted or order issued under this act.

175 (17) "Issuer" means a person that issues or proposes to issue a security,  
176 subject to the following:

177 (A) The issuer of a voting trust certificate, collateral trust certificate,  
178 certificate of deposit for a security, or share in an investment company without  
179 a board of directors or individuals performing similar functions is the person  
180 performing the acts and assuming the duties of depositor or manager pursuant  
181 to the trust or other agreement or instrument under which the security is issued.

182 (B) The issuer of an equipment trust certificate or similar security serving  
183 the same purpose is the person by which the property is or will be used or to  
184 which the property or equipment is or will be leased or conditionally sold or that  
185 is otherwise contractually responsible for assuring payment of the certificate.

186 (C) The issuer of a fractional undivided interest in an oil, gas, or other  
187 mineral lease or in payments out of production under a lease, right, or royalty is  
188 the owner of an interest in the lease or in payments out of production under a  
189 lease, right, or royalty, whether whole or fractional, that creates fractional  
190 interests for the purpose of sale.

191 (18) "Nonissuer transaction" or "nonissuer distribution" means a  
192 transaction or distribution not directly or indirectly for the benefit of the issuer.

193 (19) "Offer to purchase" includes an attempt or offer to obtain, or  
194 solicitation of an offer to sell, a security or interest in a security for value. The

195 term does not include a tender offer that is subject to Section 14(d) of the  
196 Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

197 (20) "Person" means an individual; corporation; business trust; estate;  
198 trust; partnership; limited liability company; association; joint venture;  
199 government; governmental subdivision, agency, or instrumentality; public  
200 corporation; or any other legal or commercial entity.

201 (21) "Place of business" of a broker-dealer, an investment adviser, or a  
202 federal covered investment adviser means:

203 (A) An office at which the broker-dealer, investment adviser, or federal  
204 covered investment adviser regularly provides brokerage or investment advice or  
205 solicits, meets with, or otherwise communicates with customers or clients; or

206 (B) Any other location that is held out to the general public as a location  
207 at which the broker-dealer, investment adviser, or federal covered investment  
208 adviser provides brokerage or investment advice or solicits, meets with, or  
209 otherwise communicates with customers or clients.

210 (22) "Predecessor act" means sections 409.101, 409.102 and 409.201 to  
211 409.421, as repealed by this act.

212 (23) "Price amendment" means the amendment to a registration statement  
213 filed under the Securities Act of 1933 or, if an amendment is not filed, the  
214 prospectus or prospectus supplement filed under the Securities Act of 1933 that  
215 includes a statement of the offering price, underwriting and selling discounts or  
216 commissions, amount of proceeds, conversion rates, call prices, and other matters  
217 dependent upon the offering price.

218 (24) "Principal place of business" of a broker-dealer or an investment  
219 adviser means the executive office of the broker-dealer or investment adviser from  
220 which the officers, partners, or managers of the broker-dealer or investment  
221 adviser direct, control, and coordinate the activities of the broker-dealer or  
222 investment adviser.

223 (25) "Record", except in the phrases "of record", "official record", and  
224 "public record", means information that is inscribed on a tangible medium or that  
225 is stored in an electronic or other medium and is retrievable in perceivable form.

226 (26) "Sale" includes every contract of sale, contract to sell, or disposition  
227 of, a security or interest in a security for value, and "offer to sell" includes every  
228 attempt or offer to dispose of, or solicitation of an offer to purchase, a security or  
229 interest in a security for value. Both terms include:

230 (A) A security given or delivered with, or as a bonus on account of, a

231 purchase of securities or any other thing constituting part of the subject of the  
232 purchase and having been offered and sold for value;

233 (B) A gift of assessable stock involving an offer and sale; and

234 (C) A sale or offer of a warrant or right to purchase or subscribe to  
235 another security of the same or another issuer and a sale or offer of a security  
236 that gives the holder a present or future right or privilege to convert the security  
237 into another security of the same or another issuer, including an offer of the other  
238 security.

239 (27) "Securities and Exchange Commission" means the United States  
240 Securities and Exchange Commission.

241 (28) "Security" means a note; stock; treasury stock; security future; bond;  
242 debenture; evidence of indebtedness; certificate of interest or participation in a  
243 profit-sharing agreement; collateral trust certificate; preorganization certificate  
244 or subscription; transferable share; investment contract; voting trust certificate;  
245 certificate of deposit for a security; fractional undivided interest in oil, gas, or  
246 other mineral rights; put, call, straddle, option, or privilege on a security,  
247 certificate of deposit, or group or index of securities, including an interest therein  
248 or based on the value thereof; put, call, straddle, option, or privilege entered into  
249 on a national securities exchange relating to foreign currency; or, in general, an  
250 interest or instrument commonly known as a "security"; or a certificate of interest  
251 or participation in, temporary or interim certificate for, receipt for, guarantee of,  
252 or warrant or right to subscribe to or purchase, any of the foregoing. The term:

253 (A) Includes both a certificated and an uncertificated security;

254 (B) Does not include an insurance or endowment policy or annuity  
255 contract under which an insurance company promises to pay money either in a  
256 lump sum or periodically for life or other specified period;

257 (C) Does not include an interest in a contributory or noncontributory  
258 pension or welfare plan subject to the Employee Retirement Income Security Act  
259 of 1974;

260 (D) Includes as an "investment contract" an investment in a common  
261 enterprise with the expectation of profits to be derived primarily from the efforts  
262 of a person other than the investor and a "common enterprise" means an  
263 enterprise in which the fortunes of the investor are interwoven with those of  
264 either the person offering the investment, a third party, or other investors; and

265 (E) May include as an "investment contract", among other contracts, an  
266 interest in a limited partnership and a limited liability company and an



267 investment in a viatical settlement or similar agreement.

268 (29) "Self-regulatory organization" means a national securities exchange  
269 registered under the Securities Exchange Act of 1934, a national securities  
270 association of broker-dealers registered under the Securities Exchange Act of  
271 1934, a clearing agency registered under the Securities Exchange Act of 1934, or  
272 the Municipal Securities Rulemaking Board established under the Securities  
273 Exchange Act of 1934.

274 (30) "Sign" means, with present intent to authenticate or adopt a record:

275 (A) To execute or adopt a tangible symbol; or

276 (B) To attach or logically associate with the record an electronic symbol,  
277 sound, or process.

278 (31) "State" means a state of the United States, the District of Columbia,  
279 Puerto Rico, the United States Virgin Islands, or any territory or insular  
280 possession subject to the jurisdiction of the United States.

409.2-202. The following transactions are exempt from the requirements  
2 of sections 409.3-301 to 409.3-306 and 409.5-504:

3 (1) An isolated nonissuer transaction, whether effected by or through a  
4 broker-dealer or not;

5 (2) A nonissuer transaction by or through a broker-dealer registered, or  
6 exempt from registration under this act, and a resale transaction by a sponsor of  
7 a unit investment trust registered under the Investment Company Act of 1940,  
8 in a security of a class that has been outstanding in the hands of the public for  
9 at least ninety days, if, at the date of the transaction:

10 (A) The issuer of the security is engaged in business, the issuer is not in  
11 the organizational stage or in bankruptcy or receivership, and the issuer is not  
12 a blank check, blind pool, or shell company that has no specific business plan or  
13 purpose or has indicated that its primary business plan is to engage in a merger  
14 or combination of the business with, or an acquisition of, an unidentified person;

15 (B) The security is sold at a price reasonably related to its current market  
16 price;

17 (C) The security does not constitute the whole or part of an unsold  
18 allotment to, or a subscription or participation by, the broker-dealer as an  
19 underwriter of the security or a redistribution; [and]

20 (D) A nationally recognized securities manual or its electronic equivalent  
21 designated by rule adopted or order issued under this act or a record filed with  
22 the Securities and Exchange Commission that is publicly available contains:

- 23 (i) A description of the business and operations of the issuer;
- 24 (ii) The names of the issuer's executive officers and the names of the  
25 issuer's directors, if any;
- 26 (iii) An audited balance sheet of the issuer as of a date within eighteen  
27 months before the date of the transaction or, in the case of a reorganization or  
28 merger when the parties to the reorganization or merger each had an audited  
29 balance sheet, a pro forma balance sheet for the combined organization; and
- 30 (iv) An audited income statement for each of the issuer's two immediately  
31 previous fiscal years or for the period of existence of the issuer, whichever is  
32 shorter, or, in the case of a reorganization or merger when each party to the  
33 reorganization or merger had audited income statements, a pro forma income  
34 statement; [or] **and**
- 35 (E) **Any one of the following requirements is met:**
- 36 (i) The issuer of the security has a class of equity securities listed on a  
37 national securities exchange registered under **Section 6 of** the Securities  
38 Exchange Act of 1934 or designated for trading on the National Association of  
39 Securities Dealers Automated Quotation [System, unless] **systems;**
- 40 (ii) The issuer of the security is a unit investment trust registered under  
41 the Investment Company Act of 1940; [or]
- 42 (iii) The issuer of the security, including its predecessors, has been  
43 engaged in continuous business for at least three years; or
- 44 (iv) The issuer of the security has total assets of at least two million  
45 dollars based on an audited balance sheet as of a date within eighteen months  
46 before the date of the transaction or, in the case of a reorganization or merger  
47 when the parties to the reorganization or merger each had [the] **such an** audited  
48 balance sheet, a pro forma balance sheet for the combined organization;
- 49 (3) A nonissuer transaction by or through a broker-dealer registered or  
50 exempt from registration under this act in a security of a foreign issuer that is  
51 a margin security defined in regulations or rules adopted by the Board of  
52 Governors of the Federal Reserve System;
- 53 (4) A nonissuer transaction by or through a broker-dealer registered or  
54 exempt from registration under this act in an outstanding security if the  
55 guarantor of the security files reports with the Securities and Exchange  
56 Commission under the reporting requirements of Section 13 or 15(d) of the  
57 Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));
- 58 (5) A nonissuer transaction by or through a broker-dealer registered or

59 exempt from registration under this act in a security that:

60 (A) Is rated at the time of the transaction by a nationally recognized  
61 statistical rating organization in one of its four highest rating categories; or

62 (B) Has a fixed maturity or a fixed interest or dividend, if:

63 (i) A default has not occurred during the current fiscal year or within the  
64 three previous fiscal years or during the existence of the issuer and any  
65 predecessor if less than three fiscal years, in the payment of principal, interest,  
66 or dividends on the security; and

67 (ii) The issuer is engaged in business, is not in the organizational stage  
68 or in bankruptcy or receivership, and is not and has not been within the previous  
69 twelve months a blank check, blind pool, or shell company that has no specific  
70 business plan or purpose or has indicated that its primary business plan is to  
71 engage in a merger or combination of the business with, or an acquisition of, an  
72 unidentified person;

73 (6) A nonissuer transaction by or through a broker-dealer registered or  
74 exempt from registration under this act effecting an unsolicited order or offer to  
75 purchase;

76 (7) A nonissuer transaction executed by a bona fide pledgee without the  
77 purpose of evading this act;

78 (8) A nonissuer transaction by a federal covered investment adviser with  
79 investments under management in excess of one hundred million dollars acting  
80 in the exercise of discretionary authority in a signed record for the account of  
81 others;

82 (9) A transaction in a security, whether or not the security or transaction  
83 is otherwise exempt, in exchange for one or more bona fide outstanding securities,  
84 claims, or property interests, or partly in such exchange and partly for cash, if the  
85 terms and conditions of the issuance and exchange or the delivery and exchange  
86 and the fairness of the terms and conditions have been approved by the  
87 commissioner after a hearing;

88 (10) A transaction between the issuer or other person on whose behalf the  
89 offering is made and an underwriter, or among underwriters;

90 (11) A transaction in a note, bond, debenture, or other evidence of  
91 indebtedness secured by a mortgage or other security agreement if:

92 (A) The note, bond, debenture, or other evidence of indebtedness is offered  
93 and sold with the mortgage or other security agreement as a unit;

94 (B) A general solicitation or general advertisement of the transaction is

95 not made; and

96 (C) A commission or other remuneration is not paid or given, directly or  
97 indirectly, to a person not registered under this act as a broker-dealer or as an  
98 agent;

99 (12) A transaction by an executor, commissioner of an estate, sheriff,  
100 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

101 (13) A sale or offer to sell to:

102 (A) An institutional investor;

103 (B) A federal covered investment adviser; or

104 (C) Any other person exempted by rule adopted or order issued under this  
105 act;

106 (14) A sale or an offer to sell securities of an issuer, if **the transaction**  
107 **is** part of a single issue in which:

108 (A) Not more than twenty-five purchasers are present in this state during  
109 any twelve consecutive months, other than those designated in paragraph (13);

110 (B) A general solicitation or general advertising is not made in connection  
111 with the offer to sell or sale of the securities;

112 (C) A commission or other remuneration is not paid or given, directly or  
113 indirectly, to a person other than a broker-dealer registered under this act or an  
114 agent registered under this act for soliciting a prospective purchaser in this state;  
115 and

116 (D) The issuer reasonably believes that all the purchasers in this state,  
117 other than those designated in paragraph (13), are purchasing for investment;

118 (15) A transaction under an offer to existing security holders of the issuer,  
119 including persons that at the date of the transaction are holders of convertible  
120 securities, options, or warrants, if a commission or other remuneration, other  
121 than a standby commission, is not paid or given, directly or indirectly, for  
122 soliciting a security holder in this state;

123 (16) An offer to sell, but not a sale, of a security not exempt from  
124 registration under the Securities Act of 1933 if:

125 (A) A registration or offering statement or similar record as required  
126 under the Securities Act of 1933 has been filed, but is not effective, or the offer  
127 is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17  
128 C.F.R. 230.165); and

129 (B) A stop order of which the offeror is aware has not been issued against  
130 the offeror by the commissioner or the Securities and Exchange Commission, and

131 an audit, inspection, or proceeding that is public and that may culminate in a  
132 stop order is not known by the offeror to be pending;

133 (17) An offer to sell, but not a sale, of a security exempt from registration  
134 under the Securities Act of 1933 if:

135 (A) A registration statement has been filed under this act, but is not  
136 effective;

137 (B) A solicitation of interest is provided in a record to offerees in  
138 compliance with a rule adopted by the commissioner under this act; and

139 (C) A stop order of which the offeror is aware has not been issued by the  
140 commissioner under this act and an audit, inspection, or proceeding that may  
141 culminate in a stop order is not known by the offeror to be pending;

142 (18) A transaction involving the distribution of the securities of an issuer  
143 to the security holders of another person in connection with a merger,  
144 consolidation, exchange of securities, sale of assets, or other reorganization to  
145 which the issuer, or its parent or subsidiary and the other person, or its parent  
146 or subsidiary, are parties;

147 (19) A rescission offer, sale, or purchase under section 409.5-510;

148 (20) An offer or sale of a security to a person not a resident of this state  
149 and not present in this state if the offer or sale does not constitute a violation of  
150 the laws of the state or foreign jurisdiction in which the offeree or purchaser is  
151 present and is not part of an unlawful plan or scheme to evade this act;

152 (21) Employees' stock purchase, savings, option, profit-sharing, pension,  
153 or similar employees' benefit plan, including any securities, plan interests, and  
154 guarantees issued under a compensatory benefit plan or compensation contract,  
155 contained in a record, established by the issuer, its parents, its majority-owned  
156 subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the  
157 participation of their employees including offers or sales of such securities to:

158 (A) Directors; general partners; trustees, if the issuer is a business trust;  
159 officers; consultants; and advisors;

160 (B) Family members who acquire such securities from those persons  
161 through gifts or domestic relations orders;

162 (C) Former employees, directors, general partners, trustees, officers,  
163 consultants, and advisors if those individuals were employed by or providing  
164 services to the issuer when the securities were offered;

165 (D) Insurance agents who are exclusive insurance agents of the issuer, or  
166 the issuer's subsidiaries or parents, or who derive more than fifty percent of their

167 annual income from those organizations; and

168 (E) Current employees;

169 (22) A transaction involving:

170 (A) A stock dividend or equivalent equity distribution, whether the  
171 corporation or other business organization distributing the dividend or equivalent  
172 equity distribution is the issuer or not, if nothing of value is given by  
173 stockholders or other equity holders for the dividend or equivalent equity  
174 distribution other than the surrender of a right to a cash or property dividend if  
175 each stockholder or other equity holder may elect to take the dividend or  
176 equivalent equity distribution in cash, property, or stock;

177 (B) An act incident to a judicially approved reorganization in which a  
178 security is issued in exchange for one or more outstanding securities, claims, or  
179 property interests, or partly in such exchange and partly for cash; or

180 (C) The solicitation of tenders of securities by an offeror in a tender offer  
181 in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R.  
182 230.162); or

183 (23) A nonissuer transaction in an outstanding security by or through a  
184 broker-dealer registered or exempt from registration under this act, if the issuer  
185 is a reporting issuer in a foreign jurisdiction designated by this paragraph or by  
186 rule adopted or order issued under this act; has been subject to continuous  
187 reporting requirements in the foreign jurisdiction for not less than one hundred  
188 eighty days before the transaction; and the security is listed on the foreign  
189 jurisdiction's securities exchange that has been designated by this paragraph or  
190 by rule adopted or order issued under this act, or is a security of the same issuer  
191 that is of senior or substantially equal rank to the listed security or is a warrant  
192 or right to purchase or subscribe to any of the foregoing. For purposes of this  
193 paragraph, Canada, together with its provinces and territories, is a designated  
194 foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated  
195 securities exchange. After an administrative hearing in compliance with chapter  
196 536, RSMo, the commissioner, by rule adopted or order issued under this act, may  
197 revoke the designation of a securities exchange under this paragraph, if the  
198 commissioner finds that revocation is necessary or appropriate in the public  
199 interest and for the protection of investors.

2 409.3-304. (a) A security may be registered by qualification under this  
3 section.

(b) A registration statement under this section must contain the

4 information or records specified in section 409.3-305, a consent to service of  
5 process complying with section 409.6-611, and, if required by rule adopted under  
6 this act, the following information or records:

7 (1) With respect to the issuer and any significant subsidiary, its name,  
8 address, and form of organization; the state or foreign jurisdiction and date of its  
9 organization; the general character and location of its business; a description of  
10 its physical properties and equipment; and a statement of the general competitive  
11 conditions in the industry or business in which it is or will be engaged;

12 (2) With respect to each director and officer of the issuer, and other  
13 person having a similar status or performing similar functions, the person's  
14 name, address, and principal occupation for the previous five years; the amount  
15 of securities of the issuer held by the person as of the thirtieth day before the  
16 filing of the registration statement; the amount of the securities covered by the  
17 registration statement to which the person has indicated an intention to  
18 subscribe; and a description of any material interest of the person in any material  
19 transaction with the issuer or a significant subsidiary effected within the  
20 previous three years or proposed to be effected;

21 (3) With respect to persons covered by paragraph (2), the aggregate sum  
22 of the remuneration paid to those persons during the previous twelve months and  
23 estimated to be paid during the next twelve months, directly or indirectly, by the  
24 issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

25 (4) With respect to a person owning of record or owning beneficially, if  
26 known, ten percent or more of the outstanding shares of any class of equity  
27 security of the issuer, the information specified in paragraph (2) other than the  
28 person's occupation;

29 (5) With respect to a promoter, if the issuer was organized within the  
30 previous three years, the information or records specified in paragraph (2), any  
31 amount paid to the promoter within that period or intended to be paid to the  
32 promoter, and the consideration for the payment;

33 (6) With respect to a person on whose behalf any part of the offering is to  
34 be made in a nonissuer distribution, the person's name and address; the amount  
35 of securities of the issuer held by the person as of the date of the filing of the  
36 registration statement; a description of any material interest of the person in any  
37 material transaction with the issuer or any significant subsidiary effected within  
38 the previous three years or proposed to be effected; and a statement of the  
39 reasons for making the offering;

40 (7) The capitalization and long term debt, on both a current and pro forma  
41 basis, of the issuer and any significant subsidiary, including a description of each  
42 security outstanding or being registered or otherwise offered, and a statement of  
43 the amount and kind of consideration, whether in the form of cash, physical  
44 assets, services, patents, goodwill, or anything else of value, for which the issuer  
45 or any subsidiary has issued its securities within the previous two years or is  
46 obligated to issue its securities;

47 (8) The kind and amount of securities to be offered; the proposed offering  
48 price or the method by which it is to be computed; any variation at which a  
49 proportion of the offering is to be made to a person or class of persons other than  
50 the underwriters, with a specification of the person or class; the basis on which  
51 the offering is to be made if otherwise than for cash; the estimated aggregate  
52 underwriting and selling discounts or commissions and finders' fees, including  
53 separately cash, securities, contracts, or anything else of value to accrue to the  
54 underwriters or finders in connection with the offering or, if the selling discounts  
55 or commissions are variable, the basis of determining them and their maximum  
56 and minimum amounts; the estimated amounts of other selling expenses,  
57 including legal, engineering, and accounting charges; the name and address of  
58 each underwriter and each recipient of a finder's fee; a copy of any underwriting  
59 or selling group agreement under which the distribution is to be made or the  
60 proposed form of any such agreement whose terms have not yet been determined;  
61 and a description of the plan of distribution of any securities that are to be  
62 offered otherwise than through an underwriter;

63 (9) The estimated monetary proceeds to be received by the issuer from the  
64 offering; the purposes for which the proceeds are to be used by the issuer; the  
65 estimated amount to be used for each purpose; the order or priority in which the  
66 proceeds will be used for the purposes stated; the amounts of any funds to be  
67 raised from other sources to achieve the purposes stated; the sources of the funds;  
68 and, if a part of the proceeds is to be used to acquire property, including goodwill,  
69 otherwise than in the ordinary course of business, the names and addresses of the  
70 vendors, the purchase price, the names of any persons that have received  
71 commissions in connection with the acquisition, and the amounts of the  
72 commissions and other expenses in connection with the acquisition, including the  
73 cost of borrowing money to finance the acquisition;

74 (10) A description of any stock options or other security options  
75 outstanding, or to be created in connection with the offering, and the amount of



76 those options held or to be held by each person required to be named in  
77 paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten  
78 percent or more in the aggregate of those options;

79 (11) The dates of, parties to, and general effect concisely stated of each  
80 managerial or other material contract made or to be made otherwise than in the  
81 ordinary course of business to be performed in whole or in part at or after the  
82 filing of the registration statement or that was made within the previous two  
83 years, and a copy of the contract;

84 (12) A description of any pending litigation, action, or proceeding to which  
85 the issuer is a party and that materially affects its business or assets, and any  
86 litigation, action, or proceeding known to be contemplated by governmental  
87 authorities;

88 (13) A copy of any prospectus, pamphlet, circular, form letter,  
89 advertisement, or other sales literature intended as of the effective date to be  
90 used in connection with the offering and any solicitation of interest used in  
91 compliance with section 409.2-202(17)(B);

92 (14) A specimen or copy of the security being registered, unless the  
93 security is uncertificated; a copy of the issuer's articles of incorporation and  
94 bylaws or their substantial equivalents, in effect; and a copy of any indenture or  
95 other instrument covering the security to be registered;

96 (15) A signed or conformed copy of an opinion of counsel concerning the  
97 legality of the security being registered, with an English translation if it is in a  
98 language other than English, which states whether the security when sold will  
99 be validly issued, fully paid, and nonassessable and, if a debt security, a binding  
100 obligation of the issuer;

101 (16) A signed or conformed copy of a consent of any accountant, engineer,  
102 appraiser, or other person whose profession gives authority for a statement made  
103 by the person, if the person is named as having prepared or certified a report or  
104 valuation, other than an official record, that is public, which is used in connection  
105 with the registration statement;

106 (17) A balance sheet of the issuer as of a date within four months before  
107 the filing of the registration statement; a statement of income and [changes in  
108 financial position] **a statement of cash flows** for each of the three fiscal years  
109 preceding the date of the balance sheet and for any period between the close of  
110 the immediately previous fiscal year and the date of the balance sheet, or for the  
111 period of the issuer's and any predecessor's existence if less than three years;

112 and, if any part of the proceeds of the offering is to be applied to the purchase of  
113 a business, the financial statements that would be required if that business were  
114 the registrant; and

115 (18) Any additional information or records required by rule adopted or  
116 order issued under this act.

117 (c) A registration statement under this section becomes effective thirty  
118 days, or any shorter period provided by rule adopted or order issued under this  
119 act, after the date the registration statement or the last amendment other than  
120 a price amendment is filed, if:

121 (1) A stop order is not in effect and a proceeding is not pending under  
122 section 409.3-306;

123 (2) The commissioner has not issued an order under section 409.3-306  
124 delaying effectiveness; and

125 (3) The applicant or registrant has not requested that effectiveness be  
126 delayed.

127 (d) The commissioner may delay effectiveness once for not more than  
128 ninety days if the commissioner determines the registration statement is not  
129 complete in all material respects and promptly notifies the applicant or registrant  
130 of that determination. The commissioner may also delay effectiveness for a  
131 further period of not more than thirty days if the commissioner determines that  
132 the delay is necessary or appropriate.

133 (e) A rule adopted or order issued under this act may require as a  
134 condition of registration under this section that a prospectus containing a  
135 specified part of the information or record specified in subsection (b) be sent or  
136 given to each person to which an offer is made, before or concurrently, with the  
137 earliest of:

138 (1) The first offer made in a record to the person otherwise than by means  
139 of a public advertisement, by or for the account of the issuer or another person  
140 on whose behalf the offering is being made or by an underwriter or broker-dealer  
141 that is offering part of an unsold allotment or subscription taken by the person  
142 as a participant in the distribution;

143 (2) The confirmation of a sale made by or for the account of the person;

144 (3) Payment pursuant to such a sale; or

145 (4) Delivery of the security pursuant to such a sale.

409.4-401. (a) It is unlawful for a person to transact business in this state  
2 as a broker-dealer unless the person is registered under this act as a

3 broker-dealer or is exempt from registration as a broker-dealer under subsection  
4 (b) or (d).

5 (b) The following persons are exempt from the registration requirement  
6 of subsection (a):

7 (1) A broker-dealer without a place of business in this state if its only  
8 transactions effected in this state are with:

9 (A) The issuer of the securities involved in the transactions;

10 (B) A broker-dealer registered **as a broker-dealer** under this act or not  
11 required to be registered as a broker-dealer under this act;

12 (C) An institutional investor;

13 (D) A nonaffiliated federal covered investment adviser with investments  
14 under management in excess of one hundred million dollars acting for the account  
15 of others pursuant to discretionary authority in a signed record;

16 (E) A bona fide preexisting customer whose principal place of residence  
17 is not in this state and the person is registered as a broker-dealer under the  
18 Securities Exchange Act of 1934 or not required to be registered under the  
19 Securities Exchange Act of 1934 and is registered under the securities act of the  
20 state in which the customer maintains a principal place of residence;

21 (F) A bona fide preexisting customer whose principal place of residence  
22 is in this state but was not present in this state when the customer relationship  
23 was established, if:

24 (i) The broker-dealer is registered under the Securities Exchange Act of  
25 1934 or not required to be registered under the Securities Exchange Act of 1934  
26 and is registered under the securities laws of the state in which the customer  
27 relationship was established and where the customer had maintained a principal  
28 place of residence; and

29 (ii) Within forty-five days after the customer's first transaction in this  
30 state, the person files an application for registration as a broker-dealer in this  
31 state and a further transaction is not effected more than seventy-five days after  
32 the date on which the application is filed, or, if earlier, the date on which the  
33 commissioner notifies the person that the commissioner has denied the  
34 application for registration or has stayed the pendency of the application for good  
35 cause;

36 (G) Not more than three customers in this state during the previous  
37 twelve months, in addition to those customers specified in subparagraphs (A) to  
38 (F) and under subparagraph (H), if the broker-dealer is registered under the

39 Securities Exchange Act of 1934 or not required to be registered under the  
40 Securities Exchange Act of 1934 and is registered under the securities act of the  
41 state in which the broker-dealer has its principal place of business; and

42 (H) Any other person exempted by rule adopted or order issued under this  
43 act; and

44 (2) A person that deals solely in United States government securities and  
45 is supervised as a dealer in government securities by the Board of Governors of  
46 the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit  
47 Insurance Corporation, or the Office of Thrift Supervision.

48 (c) It is unlawful for a broker-dealer, or for an issuer engaged in offering,  
49 offering to purchase, purchasing, or selling securities in this state, directly or  
50 indirectly, to employ or associate with an individual to engage in an activity  
51 related to securities transactions in this state if the registration of the individual  
52 is suspended or revoked or the individual is barred from employment or  
53 association with a broker-dealer, an issuer, an investment adviser, or a federal  
54 covered investment adviser by an order of the commissioner under this act, the  
55 Securities and Exchange Commission, or a self-regulatory organization. A  
56 broker-dealer or issuer does not violate this subsection if the broker-dealer or  
57 issuer did not know and in the exercise of reasonable care could not have known,  
58 of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer  
59 and for good cause, an order under this act may modify or waive, in whole or in  
60 part, the application of the prohibitions of this subsection to the broker-dealer.

61 (d) A rule adopted or order issued under this act may permit:

62 (1) A broker-dealer that is registered in Canada or other foreign  
63 jurisdiction and that does not have a place of business in this state to effect  
64 transactions in securities with or for, or attempt to effect the purchase or sale of  
65 any securities by:

66 (A) An individual from Canada or other foreign jurisdiction who is  
67 temporarily present in this state and with whom the broker-dealer had a bona  
68 fide customer relationship before the individual entered the United States;

69 (B) An individual from Canada or other foreign jurisdiction who is present  
70 in this state and whose transactions are in a self-directed tax advantaged  
71 retirement plan of which the individual is the holder or contributor in that  
72 foreign jurisdiction; or

73 (C) An individual who is present in this state, with whom the  
74 broker-dealer customer relationship arose while the individual was temporarily

75 or permanently resident in Canada or the other foreign jurisdiction; and

76 (2) An agent who represents a broker-dealer that is exempt under this  
77 subsection to effect transactions in securities or attempt to effect the purchase or  
78 sale of securities in this state as permitted for a broker-dealer described in  
79 paragraph (1).

409.4-404. (a) It is unlawful for an individual to transact business in this  
2 state as an investment adviser representative unless the individual is registered  
3 under this act as an investment adviser representative or is exempt from  
4 registration as an investment adviser **representative** under subsection (b).

5 (b) The following individuals are exempt from the registration  
6 requirement of subsection (a):

7 (1) An individual who is employed by or associated with an investment  
8 adviser that is exempt from registration under section 409.4-403(b) or a federal  
9 covered investment adviser that is excluded from the notice filing requirements  
10 of section 409.4-405; and

11 (2) Any other individual exempted by rule adopted or order issued under  
12 this act.

13 (c) The registration of an investment adviser representative is not  
14 effective while the investment adviser representative is not employed by or  
15 associated with an investment adviser registered under this act or a federal  
16 covered investment adviser that has made or is required to make a notice filing  
17 under section 409.4-405.

18 (d) An individual may transact business as an investment adviser  
19 representative for more than one investment adviser or federal covered  
20 investment adviser unless a rule adopted or order issued under this act prohibits  
21 or limits an individual from acting as an investment adviser representative for  
22 more than one investment adviser or federal covered investment adviser.

23 (e) It is unlawful for an individual acting as an investment adviser  
24 representative, directly or indirectly, to conduct business in this state on behalf  
25 of an investment adviser or a federal covered investment adviser if the  
26 registration of the individual as an investment adviser representative is  
27 suspended or revoked or the individual is barred from employment or association  
28 with an investment adviser or a federal covered investment adviser by an order  
29 under this act, the Securities and Exchange Commission, or a self-regulatory  
30 organization. Upon request from a federal covered investment adviser and for  
31 good cause, the commissioner, by order issued, may waive, in whole or in part, the

32 application of the requirements of this subsection to the federal covered  
33 investment adviser.

34 (f) An investment adviser registered under this act, a federal covered  
35 investment adviser that has filed a notice under section 409.4-405, or a  
36 broker-dealer registered under this act is not required to employ or associate with  
37 an individual as an investment adviser representative if the only compensation  
38 paid to the individual for a referral of investment advisory clients is paid to an  
39 investment adviser registered under this act, a federal covered investment  
40 adviser who has filed a notice under section 409.4-405, or a broker-dealer  
41 registered under this act with which the individual is employed or associated as  
42 an investment adviser representative.

409.4-408. (a) If an agent registered under this act terminates  
2 employment by or association with a broker-dealer or issuer, or if an investment  
3 adviser representative registered under this act terminates employment by or  
4 association with an investment adviser or federal covered investment adviser, or  
5 if either registrant terminates activities that require registration as an agent or  
6 investment adviser representative, the broker-dealer, issuer, investment adviser,  
7 or federal covered investment adviser shall promptly file a notice of termination.  
8 If the registrant learns that the broker-dealer, issuer, investment adviser, or  
9 federal covered investment adviser has not filed the notice, the registrant may do  
10 so.

11 (b) If an agent registered under this act terminates employment by or  
12 association with a broker-dealer registered under this act and begins employment  
13 by or association with another broker-dealer registered under this act; or if an  
14 investment adviser representative registered under this act terminates  
15 employment by or association with an investment adviser registered under this  
16 act[;] or[, if] a federal covered investment adviser[, who] **that** has filed a notice  
17 under section 409.4-405 and begins employment by or association with another  
18 investment adviser registered under this act[;] or [if] a federal covered  
19 investment adviser[, who] **that** has filed a notice under section 409.4-405[;]; **then**  
20 upon the filing by or on behalf of the registrant, within thirty days after the  
21 termination, of an application for registration that complies with the requirement  
22 of section 409.4-406(a) and payment of the filing fee required under section  
23 409.4-410, the registration of the agent or investment adviser representative, is:

24 (1) Immediately effective as of the date of the completed filing, if the  
25 agent's Central Registration Depository record or successor record or the

26 investment adviser representative's Investment Adviser Registration Depository  
27 record or successor record does not contain a new or amended disciplinary  
28 disclosure within the previous twelve months; or

29 (2) Temporarily effective as of the date of the completed filing, if the  
30 agent's Central Registration Depository record or successor record or the  
31 investment adviser representative's Investment Adviser Registration Depository  
32 record or successor record contains a new or amended disciplinary disclosure  
33 within the preceding twelve months.

34 (c) The commissioner may by order withdraw a temporary registration if  
35 there are or were grounds for discipline as specified in section 409.4-412 and the  
36 commissioner does so within thirty days after the filing of the application. If the  
37 commissioner does not withdraw the temporary registration within the thirty-day  
38 period, registration becomes automatically effective on the thirty-first day after  
39 filing.

40 (d) The commissioner may by order prevent the effectiveness of a transfer  
41 of an agent or investment adviser representative under subsection (b)(1) or (2)  
42 based on the public interest and the protection of investors.

43 (e) If the commissioner determines that a registrant or applicant for  
44 registration is no longer in existence or has ceased to act as a broker-dealer,  
45 agent, investment adviser, or investment adviser representative, or is the subject  
46 of an adjudication of incapacity or is subject to the control of a committee,  
47 conservator, or guardian, or cannot reasonably be located, a rule adopted or order  
48 issued under this act may require the registration be canceled or terminated or  
49 the application denied. The commissioner may reinstate a canceled or terminated  
50 registration, with or without hearing, and may make the registration retroactive.

409.4-412. (a) If the commissioner finds that the order is in the public  
2 interest and subsection (d) authorizes the action, an order issued under this act  
3 may deny an application, or may condition or limit registration[: (1)] of an  
4 applicant to be a broker-dealer, agent, investment adviser, or investment adviser  
5 representative, and [(2)], if the applicant is a broker-dealer or investment  
6 adviser, of [any] a partner, officer, director, person having a similar status or  
7 performing similar functions, or person directly or indirectly [controlling] **in**  
8 **control, of** the broker-dealer or investment adviser.

9 (b) If the commissioner finds that the order is in the public interest and  
10 subsection (d) authorizes the action an order issued under this act may revoke,  
11 suspend, condition, or limit the registration of a registrant and, if the registrant

12 is a broker-dealer or investment adviser, **[any] of a partner, officer, [or] director,**  
13 **[any] or person** having a similar status or performing similar functions, or **[any]**  
14 **a person** directly or indirectly **[controlling] in control, of** the broker-dealer or  
15 investment adviser. However, the commissioner **may not**:

16 (1) **[May not]** Institute a revocation or suspension proceeding under this  
17 subsection based on an order issued **[by] under a law of** another state that is  
18 reported to the commissioner or designee **[later] of the commissioner more**  
19 than one year after the date of the order on which it is based; **[and] or**

20 (2) Under subsection (d)(5)(A) **[and] or(B), [may not]** issue an order on  
21 the basis of an order **issued** under the **[state]** securities act of another state  
22 unless the other order was based on conduct for which subsection (d) would  
23 authorize the action had the conduct occurred in this state.

24 (c) If the commissioner finds that the order is in the public interest and  
25 subsection (d)(1) to (6), (8), (9), (10), **[or] (12) [and], or (13)** authorizes the action,  
26 an order under this act may censure, impose a bar, or impose a civil penalty in  
27 an amount not to exceed a maximum of five thousand dollars for a single violation  
28 or fifty thousand dollars for **[several violations] more than one violation** on a  
29 registrant, and, if the registrant is a broker-dealer or investment adviser, **[any]**  
30 **a partner, officer, [or] director, [any] or person** having a similar **status or**  
31 **performing similar** functions, or **[any] a person** directly or indirectly  
32 **[controlling] in control of** the broker-dealer or investment adviser.

33 (d) A person may be disciplined under subsections (a) to (c) if the person:

34 (1) Has filed an application for registration in this state under this act or  
35 the predecessor act within the previous ten years, which, as of the effective date  
36 of registration or as of any date after filing in the case of an order denying  
37 effectiveness, was incomplete in any material respect or contained a statement  
38 that, in light of the circumstances under which it was made, was false or  
39 misleading with respect to a material fact;

40 (2) Willfully violated or willfully failed to comply with this act or the  
41 predecessor act or a rule adopted or order issued under this act or the predecessor  
42 act within the previous ten years;

43 (3) Has been convicted of a felony or within the previous ten years has  
44 been convicted of a misdemeanor involving a security, a commodity future or  
45 option contract, or an aspect of a business involving securities, commodities,  
46 investments, franchises, insurance, banking, or finance;

47 (4) Is enjoined or restrained by a court of competent jurisdiction in an



48 action instituted by the commissioner under this act or the predecessor act, a  
49 state, the Securities and Exchange Commission, or the United States from  
50 engaging in or continuing an act, practice, or course of business involving an  
51 aspect of a business involving securities, commodities, investments, franchises,  
52 insurance, banking, or finance;

53 (5) Is the subject of an order, issued after notice and opportunity for  
54 hearing by:

55 (A) The securities, depository institution, insurance, or other financial  
56 services regulator of a state or [by] the Securities and Exchange Commission or  
57 other federal agency denying, revoking, barring, or suspending registration as a  
58 broker-dealer, agent, investment adviser, federal covered investment adviser, or  
59 investment adviser representative;

60 (B) The securities regulator of a state or [by] the Securities and Exchange  
61 Commission against a broker-dealer, agent, investment adviser, investment  
62 adviser representative, or federal covered investment adviser;

63 (C) The Securities and Exchange Commission or by a self-regulatory  
64 organization suspending or expelling the registrant from membership in the  
65 self-regulatory organization;

66 (D) A court adjudicating a United States Postal Service fraud order;

67 (E) The insurance regulator of a state denying, suspending, or revoking  
68 [the] registration [of] as an insurance agent; or

69 (F) A depository institution regulator suspending or barring [a] the  
70 person from the depository institution business;

71 (6) Is the subject of an adjudication or determination, after notice and  
72 opportunity for hearing, by the Securities and Exchange Commission, the  
73 Commodity Futures Trading Commission; the Federal Trade Commission; a  
74 federal depository institution regulator, or a depository institution, insurance, or  
75 other financial services regulator of a state that the person willfully violated the  
76 Securities Act of 1933, the Securities Exchange Act of 1934, the Investment  
77 Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity  
78 Exchange Act, the securities or commodities law of a state, or a federal or state  
79 law under which a business involving investments, franchises, insurance,  
80 banking, or finance is regulated;

81 (7) Is insolvent, either because the person's liabilities exceed the person's  
82 assets or because the person cannot meet the person's obligations as they mature,  
83 but the commissioner may not enter an order against an applicant or registrant

84 under this paragraph without a finding of insolvency as to the applicant or  
85 registrant;

86 (8) Refuses to allow or otherwise impedes the commissioner from  
87 conducting an audit or inspection under section 409.4-411(d) or refuses access to  
88 a registrant's office to conduct an audit or inspection under section 409.4-411(d);

89 (9) Has failed to reasonably supervise an agent, investment adviser  
90 representative, or other individual, if the agent, investment adviser  
91 representative, or other individual was subject to the person's supervision and  
92 committed a violation of this act or the predecessor act or a rule adopted or order  
93 issued under this act or the predecessor act within the previous ten years;

94 (10) Has not paid the proper filing fee within thirty days after having  
95 been notified by the commissioner of a deficiency, but the commissioner shall  
96 vacate an order under this paragraph when the deficiency is corrected;

97 (11) After notice and opportunity for a hearing, has been found within the  
98 previous ten years:

99 (A) By a court of competent jurisdiction to have willfully violated the laws  
100 of a foreign jurisdiction under which the business of securities, commodities,  
101 investment, franchises, insurance, banking, or finance is regulated;

102 (B) To have been the subject of an order of a securities regulator of a  
103 foreign jurisdiction denying, revoking, or suspending the right to engage in the  
104 business of securities as a broker-dealer, agent, investment adviser, investment  
105 adviser representative, or similar person; or

106 (C) To have been suspended or expelled from membership by or  
107 participation in a securities exchange or securities association operating under  
108 the securities laws of a foreign jurisdiction;

109 (12) Is the subject of a cease and desist order issued by the Securities and  
110 Exchange Commission or issued under the securities, commodities, investment,  
111 franchise, banking, finance, or insurance laws of a state;

112 (13) Has engaged in dishonest or unethical practices in the securities,  
113 commodities, investment, franchise, banking, finance, or insurance business  
114 within the previous ten years; or

115 (14) Is not qualified on the basis of factors such as training, experience,  
116 and knowledge of the securities business. However, in the case of an application  
117 by an agent for a broker-dealer that is a member of a self-regulatory organization  
118 or by an individual for registration as an investment adviser representative, a  
119 denial order may not be based on this paragraph if the individual has successfully

120 completed all examinations required by subsection (e). The commissioner may  
121 require an applicant for registration under section 409.4-402 or 409.4-404 who  
122 has not been registered in a state within the two years preceding the filing of an  
123 application in this state to successfully complete an examination.

124 (e) A rule adopted or order issued under this act may require that an  
125 examination, including an examination developed or approved by an organization  
126 of securities regulators, be successfully completed by a class of individuals or all  
127 individuals. An order issued under this act may waive, in whole or in part, an  
128 examination as to an individual and a rule adopted under this act may waive, in  
129 whole or in part, an examination as to a class of individuals if the commissioner  
130 determines that the examination is not necessary or appropriate in the public  
131 interest and for the protection of investors.

132 (f) The commissioner may suspend or deny an application summarily;  
133 restrict, condition, limit, or suspend a registration; or censure, bar, or impose a  
134 civil penalty on a registrant before final determination of an administrative  
135 proceeding. Upon the issuance of an order, the commissioner shall promptly  
136 notify each person subject to the order that the order has been issued, the reasons  
137 for the action, and that within fifteen days after the receipt of a request in a  
138 record from the person the matter will be scheduled for a hearing. If a hearing  
139 is not requested and none is ordered by the commissioner within thirty days after  
140 the date of service of the order, the order becomes final by operation of law. If a  
141 hearing is requested or ordered, the commissioner, after notice of and opportunity  
142 for hearing to each person subject to the order, may modify or vacate the order  
143 or extend the order until final determination.

144 (g) An order issued may not be issued under this section, except under  
145 subsection (f), without:

- 146 (1) Appropriate notice to the applicant or registrant;
- 147 (2) Opportunity for hearing; and
- 148 (3) Findings of fact and conclusions of law in a record.

149 (h) A person that controls, directly or indirectly, a person not in  
150 compliance with this section may be disciplined by order of the commissioner  
151 under subsections (a) to (c) to the same extent as the noncomplying person, unless  
152 the controlling person did not know, and in the exercise of reasonable care could  
153 not have known, of the existence of conduct that is a ground for discipline under  
154 this section.

155 (i) The commissioner may not institute a proceeding under subsection (a),

156 (b), or (c) based solely on material facts actually known by the commissioner  
157 unless an investigation or the proceeding is instituted within one year after the  
158 commissioner actually acquires knowledge of the material facts.

159 (j) Any applicant denied an agent, broker-dealer, investment adviser or  
160 investment adviser representative registration by order of the commissioner  
161 pursuant to subsection (a) may file a petition with the administrative hearing  
162 commission alleging that the commissioner has denied the registration. The  
163 administrative hearing commission shall conduct hearings and make findings of  
164 fact and conclusions of law. The commissioner shall have the burden of proving  
165 a ground for denial pursuant to this act.

166 (k) If a proceeding is instituted to revoke or suspend a registration of any  
167 agent, broker-dealer, investment adviser, or investment adviser representative  
168 pursuant to subsection (b), the commissioner shall refer the matter to the  
169 administrative hearing commission. The administrative hearing commission shall  
170 conduct hearings and make findings of fact and conclusions of law in such  
171 cases. The commissioner shall have the burden of proving a ground for  
172 suspension or revocation pursuant to this act. The administrative hearing  
173 commission shall submit its findings of fact and conclusions of law to the  
174 commissioner for final disposition.

175 (l) Hearing procedures before the commissioner or the administrative  
176 hearing commission and judicial review of the decisions and orders of the  
177 commissioner and of the administrative hearing commission, and all other  
178 procedural matters pursuant to this act shall be governed by the provisions of  
179 chapter 536, RSMo. Hearings before the administrative hearing commission shall  
180 also be governed by the provisions of chapter 621, RSMo.

409.5-501. It is unlawful for a person, in connection with the offer, sale,  
2 or purchase of a security, directly or indirectly:

3 (1) To employ a device, scheme, or artifice to defraud;

4 (2) To make an untrue statement of a material fact or to omit to state a  
5 material fact necessary in order to make the [statement] **statements** made, in  
6 the light of the circumstances under which [it is] **they were** made, not  
7 misleading; or

8 (3) To engage in an act, practice, or course of business that operates or  
9 would operate as a fraud or deceit upon another person.

409.6-604. (a) If the commissioner determines that a person has engaged,  
2 is engaging, or is about to engage in an act, practice, or course of business

3 constituting a violation of this act or a rule adopted or order issued under this act  
4 or that a person has materially aided, is materially aiding, or is about to  
5 materially aid an act, practice, or course of business constituting a violation of  
6 this act or a rule adopted or order issued under this act, the commissioner may:

7 (1) Issue an order directing the person to cease and desist from engaging  
8 in the act, practice, or course of business or to take other action necessary or  
9 appropriate to comply with this act;

10 (2) Issue an order denying, suspending, revoking, or conditioning the  
11 exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an  
12 investment adviser under section 409.4-403(b)(1)(C); or

13 (3) Issue an order under section 409.2-204.

14 (b) An order under subsection (a) is effective on the date of  
15 issuance. Upon issuance of the order, the commissioner shall promptly serve each  
16 person subject to the order with a copy of the order and a notice that the order  
17 has been entered. The order must include a statement whether the commissioner  
18 will seek a civil penalty or costs of the investigation, a statement of the reasons  
19 for the order, and notice that, within fifteen days after receipt of a request in a  
20 record from the person, the matter will be scheduled for a hearing. If a person  
21 subject to the order does not request a hearing and none is ordered by the  
22 commissioner within thirty days after the date of service of the order, the order,  
23 **which may include a civil penalty or costs of the investigation if a civil**  
24 **penalty or costs were sought in the statement accompanying the order,**  
25 becomes final as to that person by operation of law. If a hearing is requested or  
26 ordered, the commissioner, after notice of and opportunity for hearing to each  
27 person subject to the order, may modify or vacate the order or extend it until final  
28 determination.

29 (c) If a hearing is requested or ordered pursuant to subsection (b), a  
30 hearing before the commissioner must be provided. A final order may not be  
31 issued unless the commissioner makes findings of fact and conclusions of law in  
32 a record in accordance with the provisions of chapter 536, RSMo, and procedural  
33 rules promulgated by the commissioner. The final order may make final, vacate,  
34 or modify the order issued under subsection (a).

35 (d) In a final order under subsection (c), the commissioner may impose a  
36 civil penalty up to one thousand dollars for a single violation or up to ten  
37 thousand dollars for more than one violation.

38 (e) In a final order, the commissioner may charge the actual cost of an

39 investigation or proceeding for a violation of this act or a rule adopted or order  
40 issued under this act. These funds may be paid into the investor education and  
41 protection fund.

42 (f) If a petition for judicial review of a final order is not filed in accordance  
43 with section 409.6-609, the commissioner may file a certified copy of the final  
44 order with the clerk of a court of competent jurisdiction. The order so filed has  
45 the same effect as a judgment of the court and may be recorded, enforced, or  
46 satisfied in the same manner as a judgment of the court.

47 (g) If a person does not comply with an order under this section, the  
48 commissioner may petition a court of competent jurisdiction to enforce the  
49 order. The court may not require the commissioner to post a bond in an action  
50 or proceeding under this section. If the court finds, after service and opportunity  
51 for hearing, that the person was not in compliance with the order, the court may  
52 adjudge the person in civil contempt of the order. The court may impose a  
53 further civil penalty against the person for contempt in an amount not less than  
54 five thousand dollars but not greater than one hundred thousand dollars for each  
55 violation and may grant any other relief the court determines is just and proper  
56 in the circumstances.

57 (h) The commissioner is authorized to issue administrative consent orders  
58 in the settlement of any proceeding in the public interest under this act.

409.6-607. (a) Except as otherwise provided in subsection (b), records  
2 obtained by the commissioner or filed under this act, including a record contained  
3 in or filed with a registration statement, application, notice filing, or report, are  
4 public records and are available for public examination.

5 (b) The following records are not public records and are not available for  
6 public examination under subsection (a):

7 (1) A record obtained by the commissioner in connection with an audit or  
8 inspection under section 409.4-411(d) or an investigation under section 409.6-602;

9 (2) A part of a record filed in connection with a registration statement  
10 under sections 409.3-301 and 409.3-303 to 409.3-305 or a record under section  
11 409.4-411(d) that contains trade secrets or confidential information if the person  
12 filing the registration statement or report has asserted a claim of confidentiality  
13 or privilege that is authorized by law;

14 (3) A record that is not required to be provided to the commissioner or  
15 filed under this act and is provided to the commissioner only on the condition  
16 that the record will not be subject to public examination or disclosure;

17 (4) A nonpublic record received from a person specified in section  
18 409.6-608(a);

19 (5) Any Social Security number, residential address unless used as a  
20 business address, and residential telephone number **unless used as a business**  
21 **telephone number**, contained in a record that is filed; and

22 (6) A record obtained by the commissioner through a designee of the  
23 commissioner that a rule or order under this act determines has been:

24 (A) Expunged from the commissioner's records by the designee; or

25 (B) Determined to be nonpublic or nondisclosable by that designee if the  
26 commissioner finds the determination to be in the public interest and for the  
27 protection of investors.

28 (c) If disclosure is for the purpose of a civil, administrative, or criminal  
29 investigation, action, or proceeding or to a person specified in section  
30 409.6-608(a), the commissioner may disclose a record obtained in connection with  
31 an audit or inspection under section 409.4-411(d) or a record obtained in  
32 connection with an investigation under section 409.6-602.

Bill ✓

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