

FIRST REGULAR SESSION

# SENATE BILL NO. 486

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

Read 1st time February 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2411S.011

## AN ACT

To repeal sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.4-412, 409.5-501, and 409.6-604, RSMo, and to enact in lieu thereof nine new sections relating to the financial protection of vulnerable populations, with penalty provisions.

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

Section A. Sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.4-412, 409.5-501, and 409.6-604, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.4-412, 409.5-501, and 409.6-604, to read as follows:

409.605. As used in sections 409.600 to 409.630, the following terms shall mean:

(1) "Agencies", the department of health and senior services and the commissioner of securities;

(2) "Agent", shall have the same meaning as in section 409.1-102;

(3) "Broker-dealer", shall have the same meaning as in section 409.1-102;

(4) "Financial exploitation", the wrongful or unauthorized taking, withholding, appropriation, or use of money, real property, or personal property of a qualified adult;

(5) "Immediate family member", a spouse, child, parent, or sibling of a qualified adult;

(6) "Investment adviser", shall have the same meaning as under section 409.1-102;

(7) "Investment adviser representative", shall have the same meaning as under section 409.1-102;

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

16 (8) "Qualified adult":

17 (a) A person sixty years of age or older; or

18 (b) A person who:

19 a. Has a disability as defined in section 192.2005; and

20 b. Is between the ages of eighteen and fifty-nine;

21 [(7)] (9) "Qualified individual"[,]:

22 (a) **A broker-dealer;**

23 (b) **An investment adviser; or**

24 (c) A person associated with a broker-dealer **or investment adviser** who  
 25 serves in a supervisory, compliance, or legal capacity as part of his or her job.

409.610. If a qualified individual reasonably believes that financial  
 2 exploitation of a qualified adult has occurred, has been attempted, or is being  
 3 attempted, the qualified individual may notify the agencies. Subsequent to  
 4 notifying the agencies, an agent, **investment adviser representative**, or  
 5 qualified individual may notify an immediate family member, legal guardian,  
 6 conservator, co-trustee, successor trustee, or agent under a power of attorney of  
 7 the qualified adult **or other individual reasonably associated with the**  
 8 **qualified adult** of such belief. **The agencies may provide information**  
 9 **regarding a qualified adult to the reporting qualified individual or**  
 10 **investment adviser representative upon request.**

409.615. 1. A qualified individual may refuse a request for disbursement  
 2 **or transaction** from the account of a qualified adult, or an account on which a  
 3 qualified adult is a beneficiary or beneficial owner, if:

4 (1) The qualified individual reasonably believes that the requested  
 5 disbursement **or transaction** will result in financial exploitation of the qualified  
 6 adult; and

7 (2) The [broker-dealer or] qualified individual[:

8 (a)], within two business days:

9 (a) Makes a reasonable effort to notify all parties authorized to transact  
 10 business on the account orally or in writing, unless such parties are reasonably  
 11 believed to have engaged in suspected or attempted financial exploitation of the  
 12 qualified adult; [and]

13 (b) [Within three business days] Notifies the agencies; **and**

14 (c) **Sends written notice to the qualified adult. Such notice shall**  
 15 **include the name and contact information for the qualified individual**  
 16 **who refused the disbursement or transaction and for the Investor**

17 **Protection Hotline administered by the securities division of the**  
18 **secretary of state.**

19         2. Any refusal of a disbursement **or transaction** as authorized by this  
20 section shall expire upon the sooner of:

21             (1) The time when the [broker-dealer or] qualified individual reasonably  
22 believes that the disbursement **or transaction** will not result in financial  
23 exploitation of the qualified adult; or

24             (2) Ten business days after the initial refusal of disbursement **or**  
25 **transaction** by the qualified individual.

26         3. **Notwithstanding subsection 2 of this section to the contrary,**  
27 **following the refusal by a qualified individual of an initial request for**  
28 **disbursement or transaction from the account of a qualified adult:**

29             (1) A court of competent jurisdiction may enter an order extending the  
30 refusal of a disbursement **or transaction** or any other protective relief;

31             (2) **The commissioner of securities may enter an order extending**  
32 **the refusal of a disbursement or transaction for the time necessary to**  
33 **protect the qualified adult; or**

34             (3) **The director of the department of health and senior services,**  
35 **after notifying the commissioner of securities, may enter an order to**  
36 **extend the refusal of a disbursement or transaction for the time**  
37 **necessary to protect the qualified adult.**

38 **Subsequent to the issuance of an order under subdivision (2) or (3) of**  
39 **this subsection, the agency that issued the order shall conduct a review**  
40 **of the circumstances every thirty days to determine if the order**  
41 **extension should remain in effect.**

409.620. Notwithstanding any other provision of law to the contrary, [a  
2 broker-dealer] **an investment adviser representative**, agent, or qualified  
3 individual who, in good faith and exercising reasonable care, complies with  
4 section 409.610 or 409.615 shall be immune from any civil liability under those  
5 sections.

409.625. A broker-dealer [may] **or investment adviser shall, upon**  
2 **request**, provide access to or copies of records that are relevant to the suspected  
3 financial exploitation of a qualified adult to the agencies or law enforcement. The  
4 records may include historical records or records relating to the most recent  
5 disbursement as well as disbursements that comprise the suspected financial  
6 exploitation of a qualified adult. All records made available to the agencies under

7 this section shall not be considered a public record as defined under chapter 610.  
409.630. No later than September 1, 2016, the commissioner of securities  
2 shall develop and make available a website that includes training resources to  
3 assist broker-dealers [and], **investment advisers**, agents, **and investment**  
4 **adviser representatives** in the prevention and detection of financial  
5 exploitation of qualified adults. Such resources shall include, at a minimum,  
6 indicators of financial exploitation of qualified adults and potential steps  
7 broker-dealers [and], **investment advisers**, agents, **and investment adviser**  
8 **representatives** may take to prevent suspected financial exploitation of  
9 qualified adults as authorized by law.

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 adviser,  
6 of any partner, officer, director, person having a similar status or performing  
7 similar functions, or person directly or indirectly controlling the broker-dealer or  
8 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 partner, officer, or director, any  
13 person having a similar status or performing similar functions, or any person  
14 directly or indirectly controlling the broker-dealer or investment  
15 adviser. However, the commissioner:

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

20 (2) Under subsection (d)(5)(A) and (B), may not issue an order on the basis  
21 of an order under the state securities act of another state unless the other order  
22 was based on conduct for which subsection (d) would authorize the action had the  
23 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 (13) authorizes the action, an  
26 order under this act may censure, impose a bar, or impose a civil penalty in an

27 amount not to exceed a [maximum of five] **twenty-five** thousand dollars for [a  
28 single] **each** violation [or fifty thousand dollars for several violations] on a  
29 registrant and, if the registrant is a broker-dealer or investment adviser, **on** any  
30 partner, officer, or director, any person having similar functions or any person  
31 directly or indirectly controlling the broker-dealer or investment adviser.

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

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

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

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

46 (4) Is enjoined or restrained by a court of competent jurisdiction in an  
47 action instituted by the commissioner under this act or the predecessor act, a  
48 state, the Securities and Exchange Commission, or the United States from  
49 engaging in or continuing an act, practice, or course of business involving an  
50 aspect of a business involving securities, commodities, investments, franchises,  
51 insurance, banking, or finance;

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

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

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

62 (C) The Securities and Exchange Commission or by a self-regulatory

63 organization suspending or expelling the registrant from membership in the  
64 self-regulatory organization;

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

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

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

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

80 (7) Is insolvent, either because the person's liabilities exceed the person's  
81 assets or because the person cannot meet the person's obligations as they mature,  
82 but the commissioner may not enter an order against an applicant or registrant  
83 under this paragraph without a finding of insolvency as to the applicant or  
84 registrant;

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

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

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

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

98 (A) By a court of competent jurisdiction to have willfully violated the laws

99 of a foreign jurisdiction under which the business of securities, commodities,  
100 investment, franchises, insurance, banking, or finance is regulated;

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

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

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

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

114 (14) Is not qualified on the basis of factors such as training, experience,  
115 and knowledge of the securities business. However, in the case of an application  
116 by an agent for a broker-dealer that is a member of a self-regulatory organization  
117 or by an individual for registration as an investment adviser representative, a  
118 denial order may not be based on this paragraph if the individual has successfully  
119 completed all examinations required by subsection (e). The commissioner may  
120 require an applicant for registration under section 409.4-402 or 409.4-404 who  
121 has not been registered in a state within the two years preceding the filing of an  
122 application in this state to successfully complete an examination.

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

131 (f) The commissioner may suspend or deny an application summarily;  
132 restrict, condition, limit, or suspend a registration; or censure, bar, or impose a  
133 civil penalty on a registrant before final determination of an administrative  
134 proceeding. Upon the issuance of an order, the commissioner shall promptly

135 notify each person subject to the order that the order has been issued, the reasons  
136 for the action, and that within fifteen days after the receipt of a request in a  
137 record from the person the matter will be scheduled for a hearing. If a hearing  
138 is not requested and none is ordered by the commissioner within thirty days after  
139 the date of service of the order, the order becomes final by operation of law. If a  
140 hearing is requested or ordered, the commissioner, after notice of and opportunity  
141 for hearing to each person subject to the order, may modify or vacate the order  
142 or extend the order until final determination.

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

145 (1) Appropriate notice to the applicant or registrant;

146 (2) Opportunity for hearing; and

147 (3) Findings of fact and conclusions of law in a record.

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

154 (i) The commissioner may not institute a proceeding under subsection (a),  
155 (b), or (c) based solely on material facts actually known by the commissioner  
156 unless an investigation or the proceeding is instituted within one year after the  
157 commissioner actually acquires knowledge of the material facts.

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

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



171 suspension or revocation pursuant to this act. The administrative hearing  
172 commission shall submit its findings of fact and conclusions of law to the  
173 commissioner for final disposition.

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

409.5-501. **1.** It is unlawful for a person, in connection with the offer,  
2 sale, 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 made, in the light of the  
6 circumstances under which it is made, not misleading; or

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

9 **2. If this section is violated, the commissioner shall file an action**  
10 **under section 409.6-603 or issue an order under section 409.6-604 within**  
11 **five years of acquiring actual knowledge of the material facts of the**  
12 **violation.**

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 becomes final as to that person by operation of law. If a hearing is requested or  
24 ordered, the commissioner, after notice of and opportunity for hearing to each  
25 person subject to the order, may modify or vacate the order or extend it until final  
26 determination.

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

33 (d) In a final order under subsection (c), the commissioner may:

34 (1) Impose a civil penalty up to **[one] twenty-five** thousand dollars for  
35 **[a single] each** violation **[or up to ten thousand dollars for more than one**  
36 **violation]**;

37 (2) Order a person subject to the order to pay restitution for any loss,  
38 including the amount of any actual damages that may have been caused by the  
39 conduct and interest at the rate of eight percent per year from the date of the  
40 violation causing the loss or disgorge any profits arising from the violation;

41 (3) In addition to any civil penalty otherwise provided by law, impose an  
42 additional civil penalty not to exceed **[five] fifteen** thousand dollars for each such  
43 violation if the commissioner finds that a person subject to the order has violated  
44 any provision of this act and that such violation was committed against an elderly  
45 or disabled person. For purposes of this section, the following terms mean:

46 (A) "Disabled person", a person with a physical or mental impairment that  
47 substantially limits one or more of the major life activities of such individual, a  
48 record of such impairment, or being regarded as having such an impairment;

49 (B) "Elderly person", a person sixty years of age or older.

50 (e) In a final order, the commissioner may charge the actual cost of an  
51 investigation or proceeding for a violation of this act or a rule adopted or order

52 issued under this act. These funds may be paid into the investor education and  
53 protection fund.

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

59 (g) If a person does not comply with an order under this section, the  
60 commissioner may petition a court of competent jurisdiction to enforce the  
61 order. The court may not require the commissioner to post a bond in an action  
62 or proceeding under this section. If the court finds, after service and opportunity  
63 for hearing, that the person was not in compliance with the order, the court may  
64 adjudge the person in civil contempt of the order. The court may impose a  
65 further civil penalty against the person for contempt in an amount not less than  
66 five thousand dollars but not greater than one hundred thousand dollars for each  
67 violation and may grant any other relief the court determines is just and proper  
68 in the circumstances.

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

71 **(i) Except as otherwise provided under sections 409.107 to 409.7-**  
72 **703, the commissioner shall file an action under section 409.6-603 or**  
73 **issue an order under section 409.6-604 within twenty years of the**  
74 **violation.**

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